

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

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5 In the Matter of:

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7 GENESIS GLOBAL HOLDCO, LLC,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 April 24, 2023

17 11:01 AM

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21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

1 HEARING re ***HYBRID EVIDENTIARY HEARING***

2
3 HEARING re Doc. #236 Amended Notice Of Agenda

4
5 HEARING re Doc. #14 Motion to Authorize /Debtors' Motion for
6 Entry of Interim and Final Orders Waiving the Requirement
7 that Each Debtor File a List of Creditors and Authorizing
8 Preparation of a Consolidated List of Creditors, in Lieu of
9 Submitting a Formatted Mailing Matrix, (II) Authorizing the
10 Debtors to File a Consolidated List of the Debtors'
11 Fifty (50) Largest Unsecured Creditors, (III) Authorizing
12 the Debtors to Redact Certain Personally Identifiable
13 Information, and (IV) Granting Related Relief

14
15 HEARING re Doc. #67 Motion To File Under Seal / Debtors
16 Motion Pursuant to 11 U.S.C. 107(b),107(c) And 105(a) For
17 Entry Of An Order Authorizing The Debtors To Redact
18 And File Under Seal Certain Information About The
19 Confidential Parties Listed In The Debtors Professional
20 Retention Applications And Schedules

1 HEARING re Doc. #115 Motion To Join / Ad Hoc Group of
2 Genesis Lenders Joinder to Debtors Motion for Entry of
3 Interim and Final Orders Waiving the Requirements that Each
4 Debtor File a List of Creditors and Authorizing Preparation
5 of a Consolidated List of Creditors, in Lieu of Submitting a
6 Formatted Mailing Matrix, (II) Authorizing the Debtors to
7 File a Consolidated List of the Debtors Fifty (50) Largest
8 Unsecured Creditors, (III) Authorizing the Debtors to Redact
9 Certain Personally Identifiable Information, and (IV)
10 Granting Related Relief

11
12 HEARING re Doc. #137 The Official Committee Of Unsecured
13 Creditors Motion For Entry Of Order Requiring The Redaction
14 Of Certain Personally Identifiable Information

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 WHITE & CASE LLP

4 Attorneys for the Official Creditors' Committee

5 1221 Avenue of the Americas

6 New York, NY 10020

7

8 BY: GREGORY PESCE

9 COLIN WEST

10 J. CHRISTOPHER SHORE

11 PETE STROM

12 KATIE WICK

13 MICHELE J. MEISES

14 BARRETT LINGLE

15

16 PROSKAUER ROSE LLP

17 Attorneys for the Ad Hoc Group

18 Eleven Times Square

19 New York, NY 10036

20

21 BY: BRIAN ROSEN

22

23

24

25

1 UNITED STATES DEPARTMENT OF JUSTICE
2 Attorneys for the U.S. Trustee
3 201 Varick Street, Suite 1006
4 New York, NY 10014
5

6 BY: GREG ZIPES
7 DANIEL RUDEWICZ
8

9 CLEARY GOTTlieb STEEN & HAMILTON LLP
10 Attorneys for the Debtor
11 One Liberty Plaza
12 New York, NY 10006
13

14 BY: SEAN O'NEAL
15 JANE VANLARE
16 HOORI KIM
17

18 ALSO PRESENT TELEPHONICALLY:

19 PHILIP ABELSON
20 PAUL ARONZON
21 ERIC C. DAUCHER
22 ANSON B. FRELINGHUYSEN
23 ELLA GASPAR
24 VINCENT INDELICATO
25 HOO RI KIM

1 JESSICA LIOU
2 KEN LUKASZEWSKI
3 JEFFREY S. MARGOLIN
4 KYLE MCKUHEN
5 MARCY J. MCLAUGHLIN SMITH
6 MICHELE MEISES
7 AMANDA PARRA CRISTE
8 JEFFREY SAFTERSTEIN
9 JORDAN SAZANT
10 GORDON SUN
11 NACIF TAOUSSE
12 MEGAN VOLIN
13 ARIAM ASMEROM
14 LUKE A. BAREFOOT
15 BRENDON BARNWELL
16 BRIANNA B. BILTER
17 SABRINA BREMER
18 BRIAN BULTHUIS
19 DONALD BURKE
20 BRIAN CHANCEY
21 TOM CONHEENEY
22 COURTENAY CULLEN
23 JARED DERMONT
24 MICHAEL DIYANNI
25 DAN FORMAN

1 ASHLYN GALLAGHER
2 SHAWN GILHOOLEY
3 UDAY GORREPATI
4 JASON GOTTLIEB
5 BRANDON M. HAMMER
6 MIRA HAQQANI
7 TAYLOR HARRISON
8 MIRANDA HATCH
9 DERAR ISLIM
10 ZUL JAMAL
11 PAUL KINEALY
12 BARK KLEIN
13 OXANA KOZLOIV
14 KONRAD LAESSER
15 CHRISTINE LEE
16 MIKE LEGGE
17 MICHAEL LETO
18 SAMUEL LEVANDER
19 DAVID LOPEZ
20 ALEXANDRA LOTTY
21 PETER MAERKL
22 MICHAEL MAGZAMEN
23 KYLE MASON
24 JACK MASSEY
25 AKIKO MATSUDA

1 RICHARD CHESTER MINOTT
2 ANAIS MITRA
3 JOHN NGUYEN
4 ARIANNA PRETTO-SAKMANN
5 MOHIT RATHI
6 CHRISTIAN RIBEIRO
7 KATIE ROSS
8 ANDRES FELIPE SAENZ
9 SAMIRA SARAN
10 THERESE SCHEUER
11 JOE SCIAMETTA
12 ANDREW SCURRIA
13 MARK STANCIL
14 BENJAMIN STEELE
15 ANDREW SULLIVAN
16 VINCE SULLIVAN
17 ANDREW SWOFT
18 ANDREW TSGANG
19 WILLIAM MATTHEW UPTEGROVE
20 LAUREN WALKER
21 ROBB WARE
22 MICHAEL WEINBERG
23 JACK WESTNER
24 PAUL WIRTZ
25

I N D E X

WITNESS: DIRECT: CROSS: REDIRECT: RECROSS:

MARK ANTHONY RENZI 18 34 47 50

BRIAN TICHENOR 53/61

1 P R O C E E D I N G S

2 THE COURT: So we are here for a hybrid hearing
3 this morning. It's good to see folks in person. I hope you
4 all are well.

5 So a couple of things for those folks who are on
6 hybrid, I'm Judge Sean Lane of the United States Bankruptcy
7 Court, and just a couple of preliminary announcements. One
8 is because COVID keeps on giving, we have a little technical
9 thing I want you to be aware of, that the microphones, some
10 of these are for purposes of us capturing sound here in the
11 courtroom and some of them are for purposes of Zoom.

12 So in order to make sure that everyone is heard
13 well, not only here in the courtroom, but for Zoom, I would
14 encourage people to use the podium, which I normally don't
15 do. I normally tell people just do it where you're sitting,
16 but it probably makes -- that's closer to the Zoom
17 microphone so that all of the folks who are out there can
18 hear you.

19 And another note, again because we're here in
20 person, various folks asked to bring in electronic devices,
21 that's all great. We signed a bunch of orders, that's all
22 great. Two notes on that: one is that's for here in this
23 courtroom. If you wander around in the building, you may
24 have someone who is a court security officer stop you if you
25 ware using a device and you're not here. So it's a little

1 different down in Bowling Green, so I just wanted people to
2 be very mindful of that, and so you don't run into some
3 unintentional difficulty.

4 So with that, let me get appearances starting with
5 Debtors' counsel.

6 WOMAN: Good morning, Your Honor.

7 THE COURT: Well, for appearances, I think we can
8 probably use the microphones there.

9 MS. VANLARE: Jane VanLare, Cleary Gottlieb Steen
10 & Hamilton, on behalf of the Debtors.

11 THE COURT: All right. And what I would say is
12 when getting appearances from the tables that you're at,
13 counsel table, just make sure to project so our Zoom
14 microphone does as well. And on behalf of the Committee?

15 MR. PESCE: On behalf of the Official Creditors'
16 Committee, Gregory Pesce, White & Case. I'm joined in the
17 courtroom today with my partners, Colin West and Chris
18 Shore.

19 THE COURT: All right, good morning. And on
20 behalf of the ad hoc group?

21 MR. ROSEN: Good morning, Your Honor. Brian
22 Rosen, Proskauer Rose, on behalf of the Ad Hoc Group.

23 THE COURT: All right, good morning. And on
24 behalf of the United States Trustee's Office?

25 MR. ZIPES: Good morning, Your Honor. Greg Zipes

1 with the U.S. Trustee's Office. I am here with my
2 colleague, Daniel Rudewicz.

3 THE COURT: All right, good morning to you both.
4 And let me get any other appearances from any other party
5 who's here in the courtroom this morning. All right. I
6 don't anticipate that there's going to be anyone who's going
7 to wish to be heard and make a presentation who's on Zoom,
8 but in an abundance of caution, let me get any other Zoom
9 appearances that are appropriate.

10 Counsel, you are on mute.

11 MR. O'NEAL: Thank you, Your Honor. Sean O'Neal,
12 Cleary Gottlieb, on behalf of the Debtors. I don't
13 anticipate making an appearance today; that's why I'm not in
14 the courtroom, but just in case, I'm here, Your Honor.

15 THE COURT: Perfectly fine. Good to see you.
16 Anyone else who'd like to make an appearance who is on Zoom?
17 All right, all quiet. Just for anybody who is on Zoom, you
18 notice I'm probably looking in various different directions;
19 that's a function of where the monitors are in the
20 courtroom. Again, another joy of the virtual or semi-
21 virtual world.

22 So just to set the stage for this morning, I know
23 we have witnesses. I have the various declarations. Former
24 trial lawyer that I am, I just wanted to make sure
25 everybody's on the same page about the witnesses being in

1 the courtroom or not when another witness might be
2 testifying. The folks here are sort of a hybrid between
3 fact witnesses and expert witnesses. Expert witnesses,
4 nobody ever cares about such things; fact witnesses, people
5 sometimes do care very much. So I don't know if the parties
6 have had a chance to chat about that.

7 MS. VANLARE: We have, Your Honor, and we have no
8 issues with the witnesses being in the courtroom.

9 THE COURT: All right. Let me just confirm that
10 from the U.S. Trustee's Office.

11 MR. ZIPES: Your Honor, Greg Zipes with the U.S.
12 Trustee's Office, and we have no objection with the
13 witnesses being at the courthouse. We're assuming they're
14 representatives of the Debtor and under Federal Rule 615,
15 they're entitled to be here.

16 THE COURT: All right. Thank you very much. And
17 so, with that, I think I'll turn it over to the Debtors to
18 sort of set the stage for what's in dispute and the state of
19 the evidentiary record.

20 MS. VANLARE: Good morning again, Your Honor.
21 Jane VanLare, Cleary Gottlieb Steen & Hamilton, on behalf of
22 the Debtors.

23 We're here, Your Honor, to discuss the redaction
24 issue. It's an issue that spans a number of motions; some
25 of those motions were filed by the Debtors. The Committee

1 subsequently filed another motion seeking further redaction
2 of information. As you may recall, Your Honor, we had
3 discussed this at a prior hearing and then Your Honor
4 adjourned the evidentiary portion to today's hearing.

5 So what we'd like to do, we've discussed it prior
6 to the hearing with the Committee counsel, and I hope Mr.
7 Zipes would agree with this order. We did have some
8 discussions prior to today. We'd like to proceed with the
9 evidentiary portion and then follow that with closing
10 arguments. We did file -- when I say we, the Debtors filed
11 the declaration by Mr. Brian Tichenor from Moelis & Company.
12 He is in the courtroom today. We would like to ask that
13 Your Honor admit his declaration into evidence in lieu of
14 direct testimony.

15 We do understand that the U.S. Trustee may have
16 objections to certain portions of the testimony, so we want
17 to be clear about that. But per our prior discussions, our
18 understanding is the U.S. Trustee is fine with having the
19 declaration admitted and foregoing direct testimony this
20 morning.

21 THE COURT: All right. Thank you very much. So I
22 guess the idea is to admit it as the direct testimony
23 subject to cross-examination, so let me hear from the U.S.
24 Trustee's Office on that. Any objection to receiving that
25 declaration, which is again at Docket 231.

1 MR. ZIPES: Your Honor, Greg Zipes with the U.S.
2 Trustee's Office. No objection subject to the right of
3 cross-examination.

4 THE COURT: All right.

5 MR. ZIPES: And I can say that for the other
6 declarant as well.

7 THE COURT: All right. And all three of those
8 declarations of that other declarant?

9 MR. ZIPES: Yes, Your Honor.

10 THE COURT: Okay, thank you very much. All right,
11 so I'm happy to receive into evidence the declaration of
12 Brian Tichenor as his direct testimony for this particular
13 set of motions, subject to cross-examination. Counsel?

14 MR. WEST: Good morning, Your Honor. Colin West
15 of White & Case. Nice to see you in person. We are going
16 to -- on behalf of the Official Committee of Unsecured
17 Creditors, we're going to be proceeding in much the same
18 way, except we are going to be calling Mr. Renzi for a very
19 brief direct. I understand Mr. Zipes has no objection to
20 the admission of Mr. Renzi's declarations, but it will be
21 supplemented by a brief direct.

22 THE COURT: All right. You want to identify those
23 three declarations for the record? I referred to them as
24 sort of the initial, I guess, the supplement and then the
25 second supplement.

1 MR. WEST: Right, and those are --

2 THE COURT: You can do that more precisely that I
3 just did.

4 MR. WEST: I will. I believe the initial
5 declaration at Docket 156 was admitted at the last hearing.
6 The next declarations are the supplemental, which is Docket
7 No. 184, and the second supplemental declaration of Mark
8 Renzi at Docket No. 232.

9 THE COURT: All right. And given Mr. Zipes'
10 comments, I will receive those all into evidence as the
11 direct testimony of Mr. Renzi, subject to being supplemented
12 when we get there for whatever comments and, again, subject
13 to cross-examination by any party.

14 All right, so Miss VanLare, anything else from the
15 Debtors are the evidentiary portion?

16 MS. VANLARE: I don't think so, Your Honor. I
17 think we're ready to proceed and then, as I mentioned, I
18 think we'd like time at the end to present closing
19 arguments.

20 THE COURT: All right, thank you very much.

21 MS. VANLARE: Thank you.

22 THE COURT: All right. With that, turn it over to
23 the Committee to I guess supplement the written declarations
24 of your witness. Counsel, proceed.

25 MR. WEST: Thank you, sir. The Committee calls

1 Mark Renzi.

2 THE COURT: All right.

3 MR. ZIPES: Your Honor, Greg Zipes with the U.S.
4 Trustee's Office. Just while the witness is approaching, I
5 just want to clarification. Is this new information that's
6 being presented or is this just clarifying points in the
7 declarations.

8 MR. WEST: I think we are largely operating within
9 the scope of the declarations. I can make that
10 representation, but I think the witness is here live to
11 supplement to some extent, but I don't think we're outside
12 the subject matter of the declaration.

13 THE COURT: All right. So I'm going to receive it
14 subject to your right to object, Mr. Zipes, on behalf of the
15 U.S. Trustee's Office, and we'll see where we end up.

16 Mr. Renzi, if you would please make your way to
17 the witness box and if you would raise your right hand. Can
18 you swear the witness? Do you swear or affirm to tell the
19 whole truth and nothing but the truth so help you god?

20 MR. RENZI: I do.

21 THE COURT: All right. Please have a seat and
22 make yourself comfortable. I assume that any documents that
23 counsel wants you to see, counsel will send your way. All
24 right, counsel, proceed.

25 MR. WEST: All right.

1 DIRECT EXAMINATION OF MARK RENZI

2 BY MR. WEST:

3 Q Good morning, Mr. Renzi. Could you please state your
4 full name for the Court.

5 A Mark Anthony Renzi.

6 Q And could you please briefly summarize your educational
7 background.

8 A I attended Washington College and Boston College.

9 Q And could you please briefly summarize your employment
10 history since you graduated from college.

11 A I started off as a derivatives trader in Manhattan, and
12 I subsequently have approximately 20 years of restructuring
13 experience.

14 Q And where are you currently employed?

15 A I'm at BRG.

16 Q And has BRG been retained to act as the financial
17 advisor to the Official Committee of Unsecured Creditors or
18 UCC?

19 A Yes.

20 Q And have you become familiar with the facts of this
21 case as part of your role as advisor to the Committee?

22 A Yes.

23 Q All right. Do you have prior experience advising in
24 connection with cryptocurrency Chapter 11 cases?

25 A Yes, I do. We're involved in BlockFi and Voyager and a

1 few other non-public, you know, mandates.

2 Q Is it fair to say that you personally have been
3 involved in every single cryptocurrency case in the United
4 States with the exception of Celsius?

5 A I would say that's generally correct in terms of major
6 cryptocurrency cases, yes.

7 Q Are you familiar with the motion that was filed by the
8 UCC to redact the names, physical addresses, and email
9 addresses of the Debtors' lenders?

10 A Yes.

11 Q Okay. I'm going to refer to that information -- the
12 names, addresses, and email addresses -- as personal
13 identifiable information or PII. Will you understand what I
14 mean by that?

15 A I understand.

16 Q Okay. Have you prepared and signed declarations in
17 connection with the redaction motion?

18 A Yes, three.

19 Q And just for the record, are those the March 22, 2023
20 declaration, the March 29, 2023 declaration, and the April
21 18, 2023 declaration?

22 A Yes, that's correct.

23 Q Okay. Are the facts set forth in those declarations
24 true and correct to the best of your knowledge?

25 A Yes.

1 Q Are the opinions set forth on those declarations your
2 opinions?

3 A Yes, they are.

4 Q And have you read the objection to the UCC's motion
5 filed by the United States Trustee?

6 A Yes.

7 Q And did you attend the Zoom hearing before the Court to
8 consider the UCC's motion on March 30, 2023?

9 A I did.

10 Q Okay. Do you have a general opinion about whether
11 public disclosure of certain PII of the Genesis' lenders
12 would give rise to a risk of harm to those lenders?

13 A Yes. I believe that is true.

14 Q Okay. Can you summarize your opinion in that regard?

15 A Yes. I think the confidential information, you know,
16 is definitely important to remain confidential in this case
17 because there's a chance for physical threats, physical
18 harm, there's a chance for phishing and there's a chance for
19 psychological harm.

20 Q All right, let's then take those one at a time. Can
21 you just explain briefly how phishing works?

22 A Yeah. Phishing is an attempt of bad actors to obtain,
23 you know, confidential information from, you know, people
24 generally via the internet where they're attempting to coax,
25 you know, people on the internet to provide passwords or

1 confidential information, and it's generally just a scam.

2 Q Okay. Do criminals sometimes, through phishing
3 attempts, try to get victims to install malware on their
4 computer?

5 A Yes, they do. Malware is also another way of coaxing
6 people to provide passwords or confidential information so
7 that they can, you know, obtain or steal peoples' property,
8 including cryptocurrencies.

9 Q Notwithstanding that you've not personally advised on
10 the matter, are you familiar generally with the pending
11 cryptocurrency Chapter 11 case In re. Celsius Network, LLC?

12 A I am.

13 Q And based on what you know about that case, can you
14 describe what happened when Celsius' retail customers
15 Celsius' retail customers PII was publicly disclosed?

16 MR. ZIPES: Your Honor, I object to this question
17 to the extent that this witness is the financial advisor for
18 this Committee and not involved with Celsius. Your Honor,
19 it's not clear that he has personal knowledge in connection
20 with this. He has a general knowledge, Your Honor, and this
21 Court I believe can evaluate generally his statements, but I
22 object on the basis that he doesn't have personal knowledge.

23 THE COURT: Well, so counsel can help me out here.
24 In what I've read, I've seen reference to the notice of
25 phishing attempt, a second and third notice of phishing

1 attempts, and various other things in Celsius. I don't,
2 sitting here now without going through all of my various
3 stickers that I have here, although actually I can, it was
4 provided to me in the context of the pleadings. And I
5 think, if remember right, some of it was certainly within
6 the Renzi first declaration, right, so it's part and parcel
7 of that if I'm right. Or was it just something that was
8 attached as an exhibit to one of the Committee's papers?

9 MR. WEST: It was attached to the Renzi
10 declaration. It was briefly summarized in the Renzi
11 declaration. I don't intend to go into this much beyond
12 what's already in the declarations.

13 But I'll also note as the Court observed at the
14 beginning of the hearing, Mr. Renzi is here in part as an
15 expert and he is entitled, I believe, to testify as to the
16 information he reviewed that formed the basis for his
17 opinions, whether or not he has personal knowledge, right,
18 as opposed to testifying in his capacity as a percipient
19 fact witness, so we think it can come in on that basis.
20 Frankly, I think it already is in by virtue of the
21 declarations being admitted.

22 THE COURT: Yeah. I was going to say I'm looking
23 at Paragraph 19 of the first Renzi declaration, which says
24 these risks are playing out in real time in the pending
25 cryptocurrency case, Celsius -- and I'm just summarizing

1 here -- and it cites to Exhibit C, which is I think the
2 notices that are provided in the Celsius case. So I don't
3 know that I've heard anything that goes beyond what's
4 already in the declaration thus far, so I'm going to
5 overrule the objection for the moment. And if there's
6 something that's strikingly new, we can chat about it, but
7 next question.

8 BY MR. WEST:

9 Q All right, let me just repeat the question. Mr. Renzi,
10 can you describe what happened in the Celsius case when
11 Celsius' retail customers' PII was publicly disclosed?

12 A Sure. So I believe it was on or about October 5 in
13 2022, 600,000 records were published in the statements and
14 schedules, and they were provided for broad public. I think
15 subsequently, some actors, you know, out in the internet
16 took that information, created a database that was easily
17 searchable. That subsequently led to some phishing
18 attempts, you know, of those customers. And I think that's,
19 you know, greatly concerning in that case and I hope that's
20 something that helps guide us here.

21 Q And to your knowledge, were some of those phishing
22 attacks successful?

23 A My understanding is yes, but that's my understanding.

24 Q Okay. Do you believe the risk of phishing attacks
25 resulting from publishing creditors' PII is higher in

1 cryptocurrency bankruptcy cases than in other bankruptcy
2 cases?

3 A I think the question really comes to, in terms of this
4 case; is that correct?

5 Q Well, first, let's just take crypto versus non-crypto.
6 Do you think there's a higher risk in crypto cases as
7 opposed to non-crypto cases?

8 A Yes, I do. I think there is -- you know, it's hard to
9 reverse these transactions. It is, you know, the activity
10 out on the internet in terms of this case and the access to
11 peoples' information and the portability of it. And
12 effectively here, these assets are bearer assets, so I think
13 that those are all components that make it particularly, you
14 know, problematic.

15 Q Okay. Just to make the record clear, did you say
16 bearer assets?

17 A Bearer assets. So, Your Honor, in terms of -- if you
18 have somebody's keys to these assets, then you control the
19 assets; that's essentially what I'm getting at.

20 Q And is there a documented history, to your knowledge,
21 of criminals seeking to obtain peoples' cryptocurrency keys
22 via phishing or other manners?

23 A Yes, it's well documented.

24 Q Okay. And based on your experience, do you believe
25 that similar phishing attempts could occur here if the

1 confidential information of the Genesis lenders were to be
2 disclosed?

3 A Yes, I do.

4 Q Do you perceive a higher risk here than in the Celsius
5 case?

6 A I do. I mean, you have high net worth investors,
7 accredited investors, institutional investors; they
8 generally have a higher net worth by definition and I think
9 it's particularly heightened here.

10 Q I think you also testified that lenders could face a
11 risk of threats of violence or actual violence if their PII
12 were to be publicly disclosed. What's the basis for that
13 opinion?

14 A Yes. I think that's stated in my declaration and I've
15 provided examples. I also believe that there's some
16 examples from the FBI that provide, you know, issues that
17 have come up in the past, so definitely concerning in terms
18 of physical harm, you know, threats, psychological harm, et
19 cetera.

20 Q Did the Committee host a virtual town hall meeting on
21 April 4, 2023?

22 A Yes.

23 Q And did you attend that meeting?

24 A I did.

25 Q And what was the purpose of that meeting as you

1 understood it?

2 A Well, number one, I think it's a very effective form of
3 communication in these cases. And, number two, to express
4 concern -- some of the Committee members and a number of
5 other participants, you know, creditors of the case,
6 expressed concern about physical harm, physical threats, you
7 know, psychological harm, stealing cryptocurrency vis-à-vis
8 phishing, et cetera, so they wanted to express those issues
9 and concerns.

10 Q And was that meeting attended by a large number of
11 creditors?

12 A It was.

13 Q Apart from statements made by lenders -- addressed this
14 a little earlier, but apart from statements made by lenders
15 at the town hall meeting, what other information have you
16 reviewed in coming to the conclusion that lenders would face
17 threats or physical violence if their PII were disclosed?

18 A Well, I mean, it's very well documented. I think I
19 have that as exhibits, you know, in my declaration, you
20 know, about there's been physical threats, stealing
21 cryptocurrency, a number of other things have been cited
22 there.

23 Q Have there been kidnappings?

24 A There have been kidnappings.

25 Q Have there been physical assaults?

1 A There have been physical assaults.

2 Q Do you believe that redacting only the lenders'
3 addresses but not their names or email addresses would
4 eliminate the risks that you just testified about?

5 A Look, I think the internet is, you know, very
6 pervasive. If you just have a person's name, you can
7 generally obtain a significant amount of information. And
8 so, I think you need to redact not only their addresses but
9 also their name.

10 Q Is there a possibility that through internet searches,
11 people could identify, just based on names, could identify
12 peoples' home or business addresses?

13 A Yes.

14 Q What about email address; what's the risk of publishing
15 email addresses?

16 A I think the same is true; there's phishing attacks.
17 And I also believe, as Mr. Tichenor was likely to testify
18 to, you know, there's a lot of value to having peoples'
19 email addresses and customer lists, so I think that that's
20 also something to take into consideration.

21 Q Do you believe that disclosing the identities of
22 Genesis' institutional creditors could also give rise to a
23 risk of harm to individuals?

24 A Yes. I mean, I think when you think about
25 cryptocurrency companies and firms, a number of them are

1 small and there's one, two, you know, a handful of
2 employees. Those employees in those type of firms generally
3 have access to keys; I think it has the same -- it's the
4 same impact. So if you're highlighting an institution, you
5 know, generally, there's been a limited amount of employees
6 and you can find those employees quickly and then you still
7 have the same risk of phishing, et cetera and access to
8 keys.

9 Q Okay, let's switch now to a different topic. Mr.
10 Renzi, is it also your opinion that publicly disclosing the
11 confidential information including the names of lenders
12 could diminish the value of the Debtors' estate?

13 A Yes. I have firsthand knowledge in the Voyager and
14 BlockFi cases that these are valuable assets. And then
15 secondly, in reviewing the business plans of these
16 businesses, they specifically ascribe, you know, a certain
17 amount of value to each customer. So, yes, these assets are
18 valuable; they're part of a marketing process that's ongoing
19 in multiple cryptocurrency cases, and I believe it's a
20 valuable assets.

21 Q Is the list of lenders akin to a company's customer
22 list?

23 A I would even say it's even more heightened than that.
24 I think there's a lot of value to these lists even more so
25 and having access to high net worth individuals, yeah, so it

1 is akin to that and I think it's particularly valuable here.

2 Q And is there a risk in your opinion that publishing the
3 list of Genesis' lenders would allow competitors to solicit
4 their customers?

5 A Yes.

6 Q Are you familiar with the Genesis privacy policy, which
7 is attached as Exhibit A to your initial declaration?

8 A I am.

9 Q Okay. And what, if anything, did that policy say with
10 respect to disclosing information that Genesis collects in
11 connection with lender accounts?

12 A Sure. In regards to my testimony here, I think, and
13 also discussions with the creditors, they realize that the
14 list can be bought and sold and that there's a limited
15 amount of access to third parties; however, the policy
16 highlights that it's not available just for broad public
17 consumption.

18 Q So if you were reviewing that privacy policy that's
19 attached as Exhibit A to your initial declaration, would
20 that create an expectation that your personal information
21 would not be publicly disclosed?

22 MR. ZIPES: Your Honor, I object. This calls for
23 speculation.

24 THE COURT: Well, I think that's a conclusion I'll
25 draw, so next question.

1 MR. WEST: Well, that's the last question, so no
2 more questions.

3 THE COURT: All right.

4 MR. WEST: I'll pass the witness.

5 THE COURT: I'm going to ask a question and I
6 always say this and people give me a strange look, but
7 judges will ask questions, but they are subject to objection
8 by any party if folks believe that there's a problem with
9 the question.

10 So with that caveat, for purposes of the record,
11 there's been a lot of discussion at various hearings about
12 the term lender and a lender being akin to a customer here.
13 Can you just explain on the record the relationship here
14 between the Debtor and the lenders such that you would
15 describe them as customers, why you make that analogy.

16 THE WITNESS: I mean, sure. In terms of many
17 cryptocurrency, you know, companies, customers or lenders
18 are involved where, very simply put, let's just say you love
19 Bitcoin and if you want to lend your -- you want to lend
20 Bitcoin to a company and you get dollars back; that could be
21 an example of a lending arrangement.

22 So that, in this case, I would view it
23 synonymously with the customer, and this is something that
24 frequently happens in many cryptocurrency exchanges and
25 companies.

1 THE COURT: Thank you. Anything else?

2 MR. WEST: That's all, subject to redirect, and
3 I'll pass the witness.

4 THE COURT: All right. So Mr. Zipes, I think
5 since we have this witness on the stand sworn under oath, it
6 makes sense to finish this witness and then we can go back
7 to any examination you might want to conduct as to the
8 Debtors' witness, unless you have a better idea.

9 MR. ZIPES: No, Your Honor, that makes sense.
10 Your Honor, I didn't have a chance to address the Court
11 before and I know we have a witness on the stand. I just
12 wanted to state that we do appreciate Debtor and the
13 Committee working productively to try to limit the issues
14 involved actually and we believe for the purpose of this
15 hearing and we just weren't able to reach a resolution.

16 THE COURT: Well, since we're here -- with Mr.
17 Renzi's indulgence -- the understanding I have is governed
18 by the last time we got together when -- I don't remember
19 there being -- well, rather than say what was an issue, let
20 me see what I remember as still an issue.

21 One was the protection of the names of individual
22 creditors, as opposed to the other information. I don't
23 remember there being any objection by the U.S. Trustee as to
24 addresses and emails and things of that sort, but it was the
25 names that the U.S. Trustee for individuals creditors and

1 customers, lenders, whatever term you'd like to use, that
2 the U.S. Trustee had an objection to but not the other
3 information. Am I remembering that right?

4 MR. ZIPES: Yes, Your Honor, although I hope that
5 I didn't get it reversed or that you didn't get it reversed.
6 But the names, just as with the notice of appointment of
7 creditors' committee, the name is disclosed, the dollar
8 amount is disclosed, but the addresses are not disclosed.
9 And in addition, with respect to the institutional
10 creditors, that --

11 THE COURT: Oh yeah, I'm going to get to them in a
12 second. But there was no objection, for example, to keeping
13 confidential the email addresses.

14 MR. ZIPES: Correct.

15 THE COURT: All right, of individuals, say it that
16 way. And as to institutional folks, I think your view, if I
17 remember right, was that for subsection (c) that your view
18 was that -- because that talks about the risk to
19 individuals, that you didn't think that covered
20 institutional creditors' customers as opposed to
21 individuals.

22 MR. ZIPES: Correct.

23 THE COURT: All right. So we've got names and
24 we've got the institutional issue. Was there anything else
25 that was the subject of a live debate and dispute between

1 the U.S. Trustee's Office and other folks who were seeking
2 to seal information?

3 MR. ZIPES: Well, Your Honor, I would add one
4 other item of agreement, which is that with institutional
5 creditors to the extent that they fall under a threat
6 category, however that's defined by this Court, you know, we
7 would have no objection to their name but not their address
8 being disclosed as well. But we don't think there's been
9 any showing in that regard, but we would, in concept, be
10 okay with that as well.

11 THE COURT: All right. So with that, your witness
12 for cross-examination.

13 MR. ZIPES: Yes.

14 CROSS-EXAMINATION OF MARK RENZI

15 BY MR. FINESTONE:

16 Q Mr. Renzi, good morning.

17 A Good morning.

18 Q And this should hopefully be brief. You're familiar
19 that the Debtor and its professionals have filed a motion
20 seeking to redact certain information as well in this case,
21 correct?

22 A I am.

23 Q And you're also aware that their request does not go as
24 far as the Committee requests in terms of what it's seeking
25 to redact?

1 A Yes.

2 Q And specifically that the institutional creditors would
3 be subject to disclosure; is that correct?

4 A Yes.

5 Q And so you disagree with the Debtor in that regard.

6 A I think for both the lenders and the institutional
7 investors, the names and addresses and emails should be
8 redacted.

9 Q Okay. And, in fact, in the privacy policy which we're
10 referring to, could you describe your understanding of
11 whether that privacy policy is in effect?

12 A I believe the privacy policy is in effect and that
13 there's an expectation, you know, from lenders and
14 institutional investors that there are third parties that
15 are deemed, you know, part of the Genesis umbrella, you
16 know, have access to their information; however, the broad
17 public does not.

18 MR. ZIPES: And just so we're clear, let me just
19 refer to the Court. I don't know if the Court has the
20 exhibit book with the tabs.

21 THE COURT: I have the privacy policy.

22 MR. ZIPES: Okay.

23 BY MR. ZIPES:

24 Q So the privacy policy that we're referring to is
25 Exhibit A to your declaration dated March 22, 2023; is that

1 your understanding of the policy in place?

2 A Yes.

3 Q And you referred to the fact that information should
4 not be shared in terms of this privacy policy.

5 A In terms of public dissemination, yes.

6 Q Okay. And are you -- but this privacy policy is not
7 clear in that regard, is it?

8 A My understanding and my read of it is -- and subsequent
9 discussions is that there's an expectation that their
10 information was not going to be made publicly available.

11 Q Well, let's look at this privacy policy. First of all,
12 as we sit here today, are you certain that this is even the
13 privacy policy of the Debtor?

14 A I believe it is. I don't have any expectation that it
15 isn't, but if there's a newer one, you know, please provide
16 it.

17 Q And what is your understanding that that's the privacy
18 policy in place?

19 A I believe it is the privacy policy in place unless
20 there's a newer one.

21 Q What did you do to confirm that this is the privacy
22 policy?

23 A We had discussions with counsel to confirm that it was
24 the latest that we had and that's what we were able to
25 produce.

1 Q Well, you're using the word latest. Are you aware that
2 this policy was even ever in effect?

3 A I believe that -- I have nothing that says that it
4 wasn't in effect, and also from discussions with, you know,
5 the UCC members, they believe it was in effect.

6 Q Okay, so your basis is in discussions with other
7 people.

8 A Yes.

9 Q Okay. So let's look at the privacy policy that you --

10 THE COURT: All right, let's get the witness a
11 copy of any documents he's going to be cross-examined on.

12 MR. WEST: Okay.

13 THE COURT: I have a set of exhibits. I marked up
14 one binder that I have and the other one is unmarked, if
15 that's helpful.

16 MR. WEST: I think we'll have one for him in a
17 moment. Your Honor, I was set up to refer to tabs and
18 numbers, but I understand.

19 THE COURT: That's fine, but just we might --
20 whatever tab in whatever binder it is, if we're going to ask
21 him about specific language, it makes sense to have it in
22 front of him.

23 MR. WEST: I have a large binder.

24 THE COURT: All right, just show it to Mr. Zipes
25 just so he sees what you're handing up and also sees what

1 the tabbing nomenclature is for purposes of referencing the
2 exhibit. Thank you, counsel.

3 Mr. Zipes.

4 BY MR. ZIPES:

5 Q So, Mr. Renzi, well, let me just ask some questions
6 about your understanding. In the event of a sale of assets
7 of this Debtor, are customer datapoints being sold?

8 A I believe so, yes.

9 Q And so, just looking at the individuals, the datapoints
10 that would be sold would include all the information that
11 Genesis has with respect to each customer?

12 A I believe so, but I would like to -- what paragraph are
13 you referring to?

14 Q I'm not referring; I'm just talking generally right
15 now.

16 A Yes, I believe so.

17 Q And that might include the birthdate of the customer?
18 I don't want you to discuss any specific customer --
19 birthdate of customer.

20 A I can't speak of is it the birthdate.

21 Q Are you involved with the sale?

22 A I am involved in reviewing what the Debtors' investment
23 banker is providing in terms of how they're going to market
24 the assets.

25 Q And are you generally familiar with the assets that are

1 being marketed?

2 A Yes.

3 Q And again, the assets include customer information,
4 correct?

5 A Yes.

6 Q And to your understanding, that would be all customer
7 information?

8 A That's my understanding. However, you know, in other
9 cases, judges have ruled where somebody has a specific
10 request not to have information provided, that's been
11 granted under certain conditions, so that's why I'm
12 answering it a certain way because that's actually what
13 happened in other cases.

14 Q So it's your understanding that specific creditors can
15 come in and make specific requests with respect to
16 withholding their information?

17 A I think what the objective for the Debtors, and I agree
18 with it, is to maximize value, and also the portability of
19 customers, lenders, institutional investors, that's
20 incredibly important. So to make sure that they're
21 comfortable when the information is transported over, that's
22 something that, you know, we had to do in a couple of other
23 cases.

24 Q Okay. So again, just focus on my questions and I'm
25 just trying to figure out your understanding of what is

1 being sold for each customer.

2 THE COURT: Well, can I interject here? I don't
3 have a sale motion in front of me, so we have the regular
4 rules of the road. One of the exhibits I have is actually a
5 privacy ombudsman report in connection with the sale in
6 Celsius. So I don't know what a sale is going to look like,
7 if somebody wants to lay a foundation for questions to
8 identify particular things; otherwise, we're going to spend
9 a lot of time speculating as a group.

10 BY MR. ZIPES:

11 Q Okay. So, Mr. Renzi, can you turn to point seven of
12 the privacy policy that you have in front of you?

13 A Point seven?

14 Q Sorry, Page 8 of 22, which is...

15 A Data security; is that correct?

16 Q How we share our personal information with other
17 parties.

18 A It starts with -- no, oh sorry, got it. Yes, I'm
19 there.

20 Q Okay. And you see there that we may share your
21 personal information with our affiliates in circumstances
22 described below; do you see that?

23 A Yes, I do.

24 Q Okay. And if you go two paragraphs down, we may also
25 share your personal information with; do you see that

1 sentence?

2 A Yes, I do.

3 Q Okay. And if you look on the next page, there's a long
4 list of parties that information can be shared with. But if
5 you look at the second bullet point, companies or other
6 entities that may purchase assets, liabilities and/or whole
7 or part of the business of Genesis, including pursuant to a
8 court-ordered sale under U.S. bankruptcy law; do you see
9 that?

10 A Yes, I do.

11 Q Isn't this an exception under the reading of the
12 privacy policy to release of information?

13 A No. This says that they can sell these assets, but
14 that doesn't say that they can publicly disseminate their
15 personal information.

16 Q Okay, so let's drill down on that a little bit. They
17 can sell the information to a third party, correct?

18 A An approved third party, yes.

19 Q Well, the party that is purchasing the assets, and that
20 party can be any party that this Court approves, correct?

21 MS. VANLARE: Objection, Your Honor. I think this
22 line of questioning is calling for speculation.

23 THE COURT: Well, I mean, I get it. I can read
24 it. I understand what it says, so let's...

25 MR. ZIPES: Okay.

1 THE COURT: Is says what it says, includes make
2 sure your information is certain as described below; that
3 includes sharing personal information with, and then it's
4 got the two bullet points you referenced on top of Page 9 of
5 22, companies with who we plan to merge, combine,
6 consolidate, et cetera, et cetera. And the second one is
7 companies or other entities that may purchase assets,
8 liabilities in whole or in part, including pursuant to a
9 court-approved sale under the bankruptcy law. Got it.

10 MR. ZIPES: So, Your Honor, I don't think I need
11 to go through each of these points. I could save that for
12 argument as appropriate.

13 THE COURT: Yes.

14 MR. ZIPES: And we can move on.

15 BY MR. ZIPES:

16 Q You mentioned this town hall and general as to your --
17 by creditors that their information won't be misused in
18 various ways, right?

19 A Yes.

20 Q Are you aware that there are creditors and/or
21 customers, however we're calling them, who have filed public
22 documents on this docket, including their names and, in some
23 cases, their addresses?

24 MS. VANLARE: Objection, Your Honor. I would ask
25 that Mr. Zipes clarify his questions.

1 THE COURT: So, Mr. Zipes, I think the question is
2 fine. It would probably be even better than fine if you
3 could make a reference to a particular filing just so that
4 everybody's on the same page.

5 MR. ZIPES: Yeah.

6 BY MR. ZIPES:

7 Q So are you generally familiar with the docket in this
8 case?

9 A Yes.

10 Q Okay. And I wouldn't expect you to have mastered every
11 last document on the docket.

12 MR. ZIPES: But can I mark as UST 1 a notice of
13 transfer of claim and also hand it to the Court?

14 THE COURT: Sure.

15 MR. ZIPES: Just give me one second, Your Honor.
16 Your Honor, I did not bring enough copies with me today.

17 THE COURT: All right. Give me one second, I'll
18 look at it, and I'm happy for people to read this copy. So
19 let me ask a preliminary question before we identify this on
20 the record, whether we want to identify this on the record.
21 So as long as it's been shared with counsel and shared with
22 the witness so they know specifically what you're referring
23 to.

24 But since we have a live discussion about these
25 very issues, and I will say I will take judicial notice that

1 people will file things here in the Bankruptcy Court that we
2 will redact because they have provided us with information
3 that they shouldn't have, so a filing may or may not be
4 dispositive of something. So I'd ask if you could, with
5 reference to U.S. Trustee 1, just keep it general, but it's
6 helpful to have the actual document in front of the
7 witnesses.

8 MR. ZIPES: And, Your Honor, and I agree with
9 that, Your Honor, and I was going to suggest. There's no
10 need to identify this specific document, except to note for
11 the record that it is filed on my --

12 THE COURT: Well, it was my question that led to
13 this, but I wanted to be specific, but I think we can
14 navigate this appropriately and you can do what you need to
15 do without necessarily disseminating or highlighting this
16 particular individual's information.

17 MR. ZIPES: And, Your Honor, I'd like to mark as
18 UST No. 2 another similar document but that doesn't have all
19 the information of this one admitted, so I'm being cryptic
20 right now.

21 THE COURT: No, that's fine. And I assume you
22 want me to hand this to the witness just in terms of having
23 a copy in front of his; is that correct?

24 MR. ZIPES: Yes, thank you.

25 THE COURT: All right.

1 BY MR. ZIPES:

2 Q And, Mr. Renzi, we've all heard the admonishment of the
3 Court to not be too specific here. But is it your
4 understanding that creditors have filed documents with their
5 name and address in this case?

6 A I have two examples in front of me, so yes.

7 Q And this case involves customers who voluntarily signed
8 up with Genesis; is that correct?

9 A Yes.

10 Q Have you been involved with any of the opioid cases?

11 A I have not.

12 Q Have you been involved with any of the Archdiocese
13 abuse cases?

14 A I have not.

15 Q Okay. Well, are you generally familiar with those
16 cases?

17 A Generally, yes.

18 Q And you're aware that the creditor body in those cases
19 is generally involuntary in the sense that they were opioid
20 users or sexual abuse survivors?

21 A Yes.

22 Q And would you say that that's a meaningful distinction
23 between this case and those cases in terms of redacting or
24 deeming certain information of customers confidential?

25 A I think the proper --

1 MR. WEST: I'm going to object.

2 THE COURT: Hold on.

3 MR. WEST: Objection. Do you want me to go to the
4 podium?

5 THE COURT: Yeah, please.

6 MR. WEST: I think the question was, is it a
7 meaningful distinction in terms of the redaction. I think
8 we're into a pure question of law there and I'm not sure Mr.
9 Renzi needs to be here opining as to that particular
10 question.

11 THE COURT: So, Mr. Zipes, your response?

12 MR. ZIPES: Your Honor, he was designated as an
13 expert of some kind. I'm not sure exactly what that expert
14 is, but if he's --

15 THE COURT: Well, I understood him to be an expert
16 in connection with being a financial advisor, particularly
17 in cryptocurrency industry. And so, I'm not taking him to
18 be an expert on the opioid cases or the Diocesan cases. I
19 guess my thought is that -- let me hear what -- so your
20 question is, is it a meaningful distinction? I mean, it's a
21 distinction. I guess the question is I think how meaningful
22 or not is something that the parties are asking me to
23 determine in the context of this proceeding, and so it's
24 sort of the ultimate issues in some ways.

25 I mean, I'll allow him to answer. I'm not sure

1 how probative it is at the end of the day. Let me just for
2 interest of a clear record, I'll ask that the question be
3 restated.

4 MR. ZIPES: Your Honor, I think that's -- I can
5 leave that for argument.

6 THE COURT: All right.

7 BY MR. ZIPES:

8 Q Mr. Renzi, you do agree that these customers are
9 sophisticated?

10 A I do.

11 Q Okay. And the word accredited has been used in
12 describing them. Can you describe what the word accredited
13 means?

14 A They're accredited investors that have a certain level
15 of income that's higher than most that provides them that
16 distinction.

17 Q And could an accredited investor also be -- could an
18 investor be accredited as a Series 7 holder?

19 A It doesn't. You can be an accredited investor, I
20 believe, and hold a Series 7, but I don't know that -- I
21 don't know more specifically than that.

22 Q So is accredited a term of art defined by the SEC or
23 some other government regulator?

24 A I'm not sure.

25 Q Okay. So your definition of accredited is just someone

1 who's a high net worth generally?

2 A It's a high net worth and a higher income than most.

3 MR. ZIPES: Your Honor, just give me one second.

4 THE COURT: Sure.

5 MR. ZIPES: Your Honor, I think I'm done with this
6 witness. I have questions about what's being sold, but I
7 think he's not the right witness for this.

8 THE COURT: All right, thank you very much. And
9 so, with that, any redirect for this witness?

10 MR. WEST: Very briefly, Your Honor.

11 THE COURT: Mr. Zipes, I'm assuming that your
12 exhibits were for purposes of -- I don't know if you want to
13 introduce them more sufficient to basically say they helped
14 established the testimony and that that's all you needed
15 them for.

16 MR. ZIPES: Well, Your Honor, I've asked that they
17 be admitted, but, Your Honor, we can work out with Committee
18 and Debtors' counsel on exactly how that looks.

19 THE COURT: All right, thank you.

20 REDIRECT EXAMINATION OF MARK RENZI

21 BY MR. WEST:

22 Q So, Mr. Renzi, could you turn back to the privacy
23 policy, which was attached as Exhibit A to your initial
24 declaration.

25 A Sure. I'm there.

1 Q Okay. So we're in Section 7, which is how we share
2 personal information with other parties. There's a list of
3 bullet points under No. 7, right, there's eight bullet
4 points, right?

5 A Okay.

6 Q Do any of those bullet points allow Genesis to share
7 information generally with the public?

8 A Not that I can tell.

9 Q Okay. If you look at the, I think it's the fifth
10 bullet point beginning companies or other entities that we
11 plan to merge; do you see that bullet point?

12 A Yes.

13 Q Look at the second sentence, you see, should a merger
14 combination or consolidation occur, we will require that the
15 new combined and/or surviving entity, as the case may be,
16 follow this privacy notice substantially with respect to
17 your personal information?

18 A Yes, I see that.

19 Q What do you understand that to mean?

20 A It's asking for the privacy of information to be
21 consistent relative with this document here.

22 Q And again, this document as you can tell doesn't allow
23 Genesis to share the information with the public, right?

24 A That's right.

25 Q Okay. And then with respect to a potential sale, I'm

1 going to speak generally. I think you testified earlier
2 that Genesis has an interest in keepings its customer list
3 private and unavailable to competitors, right?

4 A Yes.

5 Q Okay. Would a potential buyer of Genesis, including
6 potentially its customer list, also have an incentive to
7 keep that customer list private?

8 A Yes.

9 Q Why would that be?

10 A I mean, if they're going to bid on an asset such as
11 this, they're going to pay money for it and they really
12 don't want that information out in the public. They want to
13 retain that information obviously, you know, create
14 hopefully a good sound platform for the customers here to
15 move to that platform.

16 Q You can put that one away. Just with reference,
17 general reference to U.S. Trustee Exhibits 1 and 2, Mr.
18 Zipes gave you a couple of samples where creditors
19 apparently filed documents on the docket publicly disclosing
20 their names and some identifiable information. Do these two
21 examples change your opinion that you gave earlier about the
22 general sentiment that you've heard from the creditor body
23 as it relates to the disclosure of their personal
24 information?

25 A No, it does not change my opinion.

1 MR. WEST: No further questions, Your Honor.

2 MR. ZIPES: Your Honor, I just have one more
3 question.

4 RECROSS-EXAMINATION OF MARK RENZI

5 BY MR. ZIPES:

6 Q Mr. Renzi, you were pointed to language in the privacy
7 policy relating to the sale of assets. And I guess the
8 point was that they need to abide by this privacy policy to
9 the extent it's coherent, correct?

10 A Yes.

11 Q Okay. So I just ask you to look at the bullet point at
12 the bottom of Page 8 of 22 and that bullet point is
13 financial institutions with which we partner.

14 A Yes, I see that.

15 Q And you'll see that that does not have the qualifying
16 language that's contained with respect to a sale of assets,
17 correct?

18 MS. VANLARE: Objection.

19 THE COURT: Basis?

20 MS. VANLARE: Again, I'm not sure when Mr. Zipes
21 refers to clarifying language, what is the clarifying
22 language that is or is not up for debate?

23 THE COURT: I'm going to overrule that. I
24 understood him to say it doesn't have the same kind of
25 language about requiring those entities to follow the

1 privacy policy. Is that right, Mr. Zipes?

2 MR. ZIPES: That's correct.

3 THE COURT: All right. Could you file that, Mr.
4 Renzi, so that you can answer it or should he restate it?

5 THE WITNESS: Yes, Your Honor. So I think simply
6 put when I read this and with my experience in this industry
7 and the fact that Voyager and BlockFi did redact
8 information, all of the public that's confidential
9 information, I read these two bullets together, so I don't
10 think they exist without each other. So I think the most
11 important thing is that there's nothing here that says that
12 public information -- this information can be publicly
13 disseminated.

14 BY MR. ZIPES:

15 Q Are you familiar with the financial institutions with
16 which the Debtor has partners?

17 A Some.

18 Q And unless you're going to tell me that that's -- are
19 there any publicly noted? I don't want you to reveal
20 financial institutions that are not publicly disclosed.

21 MR. WEST: I would strictly just jump in here just
22 to guide the witness and I think consistent with Mr. Zipes'
23 guidance that probably Mr. Renzi should err on the side of
24 caution in sitting there right now without knowing what's...

25 THE COURT: So let me see if can cut to this.

1 What's your ultimate goal, Mr. Zipes; is it to find out
2 whether any of these entities have publicly disclosed the
3 customer information?

4 MR. ZIPES: No. Your Honor, the point is and I
5 guess this goes into argument as well -- but that these
6 financial institutions aren't restricted in the same way
7 under this policy by its claim (indiscernible).

8 THE COURT: Well, I think we -- you can just ask
9 that question. Does he know one way or the other whether
10 the financial institutions in the bullet point at the bottom
11 of page 8 of 22 are governed by any requirements as use of
12 PII customers/lenders. Does that work for you?

13 MR. ZIPES: Well, certainly, Your Honor.

14 THE WITNESS: Your Honor, I mean, as I read the --
15 one, two, three, four, five, six -- six words here, it
16 doesn't say that if I give information to them that they in
17 turn can go publicly disseminate the information. And I
18 think that would -- I'm not a lawyer, but it doesn't seem --

19 MR. ZIPES: Okay.

20 THE WITNESS: -- like that's what it's giving
21 anybody authority to do.

22 THE COURT: Any other questions, Mr. Zipes?

23 MR. ZIPES: No other questions, Your Honor.

24 THE COURT: All right. Any other questions of
25 this witness?

1 MR. WEST: No, Your Honor. Not from me.

2 THE COURT: All right. Hearing no other
3 questions, Mr. Renzi, you are excused. Thank you for your
4 testimony.

5 THE WITNESS: Thank you.

6 THE COURT: And with that, I think we will go to
7 the Debtor's witness, who is cross -- sorry, whose direct
8 testimony has been admitted without elaboration -- further
9 elaboration in person, and Mr. Zipes, I assume that you have
10 questions of this witness.

11 MR. ZIPES: Yes, I do, Your Honor.

12 THE COURT: All right. So I'd ask that the
13 Debtor's witness take the stand. And mister -- is it
14 Tichenor? Am I saying that correctly?

15 MR. TICHENOR: Tichenor.

16 THE COURT: Tichenor. All right. Thank you. Mr.
17 Tichenor, if you'd raise your right ahead and repeat after
18 me. Do you solemnly swear or affirm to tell the whole truth
19 and nothing but the truth in these proceedings?

20 MR. TICHENOR: I do.

21 THE COURT: All right then. The witness is sworn.
22 Mr. Zipes, your witness for cross examinations.

23 CROSS-EXAMINATION OF BRIAN TICHENOR

24 BY MR. ZIPES:

25 Q Good afternoon. It's officially afternoon. I have a

1 few questions for you as well, Mr. Tichenor, and I just
2 botched that name.

3 A Oh, no. It's okay. People do it all the time, so
4 don't worry. Yeah.

5 Q So all right. Can you explain what the term accredited
6 investor means?

7 A I believe accredited investor as we reference it refers
8 to the SEC definition under Reg D of what defines an
9 accredited investor under the '33 Act.

10 Q Okay. And all right. Is it your understanding that an
11 investor could be a Series 7 holder?

12 A My understanding is among other factors, I believe a
13 Series 7 is included in that.

14 Q And for the high worth net -- but you don't have to be
15 a Series 7; is that correct?

16 A I believe -- and I don't recall the exact specifics of
17 the numerous items that would allow for a party to be an
18 accredited investor, but my recollection is that among
19 those, one of those is a Series 7 holder.

20 Q Okay. And for -- you could also be a high-net-worth
21 individual; is that correct?

22 A Yeah. I believe the dollar amounts are specified in
23 Regulation D.

24 Q And as part of that, are there any requirements put on
25 you as the investor? Do you have to sign paperwork, or

1 review paperwork, or review your status with anybody? Can
2 you just describe the process for an individual?

3 A I don't actually recall the exact specifics of what
4 declarations an individual or institution need to make in
5 connection with being an accredited investor specifically.

6 I know in a lot of scenarios -- for example, you may
7 qualify by clicking a button that you are in fact an
8 accredited investor to the extent that it's a form that's
9 presented to you --

10 Q Would you say it's --

11 A -- in connection with signing up on a platform, for
12 example.

13 Q I'm sorry. Go ahead. I'm sorry.

14 A Oh, no. I was saying I know, for example, like if you
15 sign up with a (indiscernible), sometimes they'll ask you
16 whether or not you're an accredited investor, and it's an
17 election that you can chose to click on.

18 Q And what is -- what is your purpose of this -- clicking
19 the box or whatever? Is that -- is it to put on notice that
20 you have some sophistication? Is that fair?

21 A I believe it defines a number of activities that you
22 may or may not be able to do, even legally speaking, in
23 connection with being an accredited investor, so the types
24 of -- for example, if it is a broker-dealer in that context,
25 the nature of certain types of investments that you may be

1 able to make that you may be otherwise restricted to be able
2 to do to the extent that you're not an accredited investor.

3 Q Okay. And turning to the sale and the sale assets, are
4 you generally familiar with the sale?

5 A I am.

6 Q Of Genesis?

7 A I am.

8 Q Okay.

9 A I'm the investment banker to the company, so we are
10 currently involved in operating and managing a sale process
11 for the business.

12 Q Okay. So hopefully I have the right witness here. And
13 you're aware that customer lists are part of the sale
14 process; is that correct?

15 A That's correct.

16 Q And that's actually a large part of the sale of this --
17 of these Debtors?

18 A Yeah. We believe that the sale of the customer list
19 and that information is one of the primary assets of the
20 business.

21 Q And Genesis has collected certain information about the
22 customers; is that correct?

23 A That's my understanding.

24 Q Okay. And does that -- does that include their name?

25 A I believe so, yes.

1 Q Is it -- well --

2 A Yeah. My -- yes.

3 Q Doesn't Genesis have a vetting process? They want to
4 make sure the individual is who he or she says?

5 A Yes. They have KYC and AML procedures that they follow
6 related to the onboarding of customers.

7 Q Okay. And does that include getting, for individuals,
8 their date of birth, and address, and bank accounts, and
9 that sort of information?

10 A That's correct.

11 Q And to your knowledge, is that information being sold
12 as part of -- part of the sale process?

13 A Yes. My understanding is that to the extent that it's
14 allowed under a sale process relating to what assets can or
15 cannot be sold in connection with the terms of use, we would
16 seek to sell that information, which would, you know,
17 include among other things the name of a creditor, e-mail
18 address, and other information that would allow for a buyer
19 to potentially market to those customers, among other
20 things.

21 Q And that would include Social Security number as well?

22 A I can't speak specifically to whether or not that's a
23 piece that would be included or excluded. Hasn't been
24 addressed in the context of the sale yet.

25 Q Okay. And you're aware of this controversy between my

1 office, and the Debtors, and everybody else in this case I
2 guess relating to redaction of information. We're -- you're
3 familiar with schedules that are filed in bankruptcy cases,
4 correct?

5 A Broadly speaking, yes.

6 Q And that information generally does include the name
7 and address of the creditor?

8 A I -- generally speaking, that's my understanding. I'm
9 not specifically a restructuring expert. I work on
10 restructurings among other things, but within our financial
11 institutions group, I focus on M&A restructuring, capital
12 markets activities, and among other things, investment
13 banking, advisory, broadly speaking, which does not include,
14 for example, the preparation of statements and schedules in
15 connection with restructuring transactions.

16 Q Okay. All right. Are you aware that Genesis has a
17 privacy policy in place right now?

18 A I'm aware that they have a privacy policy. Yes.

19 Q And is that privacy policy the one that was -- that we
20 -- that was identified by Committee Counsel?

21 A I can't speak to the specifics of it. I haven't read
22 Mr. Renzi's testimony specifically or the privacy policy or
23 had an opportunity to review whether or not that is in fact
24 the privacy policy of the company.

25 Q Okay. So is it your understanding that the privacy

1 policy is posted on the internet?

2 A I believe it is.

3 Q Okay. Well, I don't want -- I don't want you to guess.

4 Have you -- have you reviewed the privacy policy?

5 A I've reviewed it at a high level. I wouldn't say that
6 I've reviewed in detail.

7 MS. VANLARE: Objection, Your Honor. I will just
8 note that this goes outside the scope of Mr. Tichenor's
9 declaration.

10 THE COURT: All right. I do see, Mr. Zipes, the
11 privacy policy is not mentioned in here. Actually, for that
12 matter, I don't -- I don't think the discussion about
13 accredited investors is either, but -- so I think --

14 MR. ZIPES: Okay.

15 THE COURT: What would you like to do?

16 MR. ZIPES: Let me -- let me just move on.

17 BY MR. ZIPES:

18 Q You're familiar with the Debtor's attempts to redact
19 certain information on these schedules, correct?

20 A I am.

21 Q And you're also familiar with the specific requests
22 that individual's names and addresses be redacted?

23 A I am.

24 Q And as to institutions, the names can be disclosed.

25 I'm just trying to get an understanding of what the Debtor's

1 position is.

2 A My understanding is the Debtor's position would be to
3 not disclose that information to the extent that it was
4 possible, so we would seek to redact all information
5 relating to the names, address, and otherwise of creditors.

6 Q In Genesis, is there any ability of customers to
7 withdraw assets at the moment?

8 A Not at the moment.

9 Q Is there any immediate plan within the next couple of
10 weeks to allow customers to withdraw assets?

11 MS. VANLARE: Objection, Your Honor. Again, I
12 think this goes beyond the scope of the declaration and
13 foundation.

14 THE COURT: Well, I guess I'm -- my question is
15 I'm -- what's the relevance to this particular hearing?

16 MR. ZIPES: There's arguments -- I could save it
17 for argument, again, Your Honor, but there are arguments
18 that parties can be coerced into withdrawing assets in this
19 case.

20 THE COURT: Well, unless somebody has a crystal
21 ball that I don't possess, I don't think we know how the
22 case will progress, just like we don't know how any of these
23 cases will progress. So right now, certainly customers
24 can't withdraw assets, but I guess I'll take it as -- the
25 rest of it as unknown to various degrees. So next question.

1 MR. ZIPES: Okay. Your Honor, just give me one
2 second.

3 THE COURT: Sure.

4 MR. ZIPES: Your Honor, I have no further
5 questions for the witness. Thank you.

6 THE COURT: All right. Thank you very much. Any
7 redirect?

8 MS. VANLARE: No, Your Honor.

9 THE COURT: All right. Redirect?

10 MR. ROSEN: Your Honor, may I ask a question of
11 the witness?

12 THE COURT: Any objection to the Ad Hoc Committee
13 asking a question of this witness?

14 MR. WEST: As long as it's within the scope of the
15 declaration, Your Honor.

16 MS. VANLARE: No objection.

17 THE COURT: All right. So given the no objection
18 subject to all usual rules about what your question is, fire
19 away, Counsel.

20 MR. ROSEN: Thank you very much, Your Honor.

21 CROSS-EXAMINATION OF BRIAN TICHENOR

22 BY MR. ROSEN:

23 Q Mr. Tichenor, there were a lot of questions asked of
24 you about the same process and the efforts being undertaken
25 by you in connection with the sale of the Genesis assets.

1 Are the parties to -- with whom you are speaking, are they -
2 - have they executed nondisclosure agreements with respect
3 to the information that they are getting from Genesis?

4 A They do. It's required.

5 Q So the names and information associated with the client
6 list then would be subject to the same nondisclosure
7 obligations that Genesis currently has?

8 A So while that information would be subject to the same
9 nondisclosure obligations, during a sale process, we would
10 not plan to provide information relating to the name of
11 creditors, for example, or customers to parties in
12 connection with the sale process.

13 And this is consistent with two other cases, for
14 example, that I'm investment banker to the debtor on, the
15 first being Voyager and the other being BlockFi. And given
16 the value of the information relating to the creditor list,
17 we do not provide that information to parties until a sale
18 transaction has been consummated.

19 And that's actually consistent with even broadly how we
20 would run a sale process for any financial institution where
21 a creditor list is inherently one of the most valuable
22 assets because it provides for a source of funding. So in a
23 lot of scenarios, financial institutions are highly unique
24 in the sense that the assets in a lot of ways are actually
25 your liabilities. It's customers. They're your source of

1 funding, and there's even a concept in banks called a core
2 deposit premium where you actually capitalize good will
3 relating to the value of those liabilities and customers.

4 So in this context, while parties would be subject to
5 NDA, we would not provide them information relating to those
6 customers up until the transaction has even been
7 consummated.

8 MR. ROSEN: Thank you very much. Thank you, Your
9 Honor.

10 THE COURT: All right. Thank you. Any other
11 questions of this witness?

12 All right. Hearing no further requests for
13 questioning, Mr. Tichenor, you are excused. Thank you for
14 your testimony.

15 THE WITNESS: Thank you.

16 THE COURT: All right. Unless I'm missing
17 something, I think that concludes the evidentiary portion of
18 this hearing, although I just want to make sure -- maybe
19 I'll ask this question. I don't know that this is subject
20 to debate, so I didn't ask a witness.

21 I have the privacy policy, which is entitled Privacy
22 Notice. It's Exhibit A to mister -- one of Mr. Renzi's
23 declarations. And then later, there is also a -- also
24 attached as Exhibit B, the Master Digital Asset Laon
25 Agreement, and I just had a question as to how those two

1 overlapped, worked together, differed, who they covered,
2 didn't cover. And just before we finally close the
3 evidentiary portion, again, I think it is what it is, but I
4 just want -- I thought it was an appropriate factual
5 question to ask now.

6 MS. VANLARE: Your Honor, so the privacy policy
7 was posted on the website of the company. The -- I believe
8 you asked about the Master Loan Agreement.

9 THE COURT: Right.

10 MS. VANLARE: That was a document that individual
11 lenders would enter into with, for example, GGC in
12 connection with entering into transactions, into loans with
13 GGC.

14 THE COURT: All right. So the first one is the
15 fairly common kind of click agreement that happens in a lot
16 of industries that when you access things on the internet,
17 this is what you agree to. And the other -- so would folks
18 -- if they were going to be customers, do they always enter
19 into the master digital loan -- asset loan agreement, or is
20 this for a particular kind of transaction, a particular kind
21 of customer?

22 MS. VANLARE: So lenders to GGC would enter into
23 an MLA if they were going to undertake a loan transaction.
24 The Debtors do have non-debtor affiliates that may enter
25 into other types of agreements, but the MLA was primarily

1 the document that was entered into by GGC and its lender/
2 customers.

3 THE COURT: All right. So if you're a
4 lender/customer, you're entering into a Master Loan
5 Agreement for purposes of this case?

6 MS. VANLARE: Typically yes.

7 THE COURT: All right. So would it be correct
8 then to understand these as belt and suspenders in terms of
9 understanding one's more general and one's more specific
10 when you actually cross the Rubicon to enter into a specific
11 arrangements?

12 MS. VANLARE: I think that's fair, Your Honor, as
13 to confidentiality, but also I think they are different in
14 the sense that the policy was -- excuse me -- available
15 online, and it was broad in nature. The MLA, of course, had
16 additional terms and was a contract --

17 THE COURT: Right.

18 MS. VANLARE: -- that people entered into with the
19 company.

20 THE COURT: I mean, I just ask because there's a
21 confidentiality provision on page 11, paragraph XI, about
22 the agreement. And I think if the agreement -- if I'm right
23 -- that that makes a creditor/lender -- that makes that
24 relationship happen, right? So you could click and be
25 subject to the privacy policy but not yet be a creditor or a

1 lender. But once you -- once you execute this, you are, and
2 then you've got that separate confidentiality agreement.

3 MS. VANLARE: That's exactly right, Your Honor.

4 THE COURT: All right. All right. I just wanted
5 to understand how those work together.

6 All right. So with that, my thought would be to
7 hear any closing argument unless there's something else we
8 need to do before we jump into that.

9 MR. ZIPES: Your Honor, I just want to be heard
10 briefly on the privacy policy discussion. And I think I
11 could save this for argument, but -- I'll save it for
12 argument. I'm reserving all my rights.

13 THE COURT: Yeah. No, that's fine. I was just
14 trying to clarify a fact, and I wanted to do it before any
15 witnesses would leave the building in case there was a need
16 for a witness to clarify it back, and I didn't want anyone
17 to be surprised and save that for the argument portion, but
18 I also didn't want to interrupt anybody's examination.

19 MR. ZIPES: So Your Honor, here's my concern about
20 this fact. I asked the question whether the one witness who
21 submitted an affidavit in this regard has knowledge that
22 this is the actual privacy policy, and he said he assumed it
23 is the proper policy. And Your Honor, I just want to
24 reserve my rights in that regard. I don' t--

25 THE COURT: That's why -- so here's what I don't

1 want to have happen. I don't want confusion about what the
2 facts are to be -- to be an issue in deciding this. So what
3 I'd like to do is give the parties a second to talk and
4 clarify because, for example, I was going to suggest this
5 with your exhibits is to put on the record essentially some
6 kind of stipulation as to what is relevant for these
7 purposes so you can rest easy, but I think parties can work
8 that out. And to me, this is a similar thing. It's not
9 uncommon for people to have click agreements, and that's
10 what's on the website because you need something on the
11 website.

12 But I wanted to just clarify, and this was in the
13 -- in the -- it was an exhibit, and so that's how I
14 understood it, but I just wanted to make sure there was no
15 lack of clarity, so why don't I give you all a few minutes
16 to chat so you can then figure out what should go on the
17 record and what shouldn't. And if there's a question that
18 needs to be asked of a witness in that regard, we can do
19 that. That's why I wanted to raise it now.

20 MR. ZIPES: Okay, Your Honor.

21 THE COURT: All right. So --

22 MS. VANLARE: Thank you.

23 THE COURT: I'll give you like 10 minutes, or just
24 let us know in chambers when you're ready. I don't think
25 it'll take too long. But again, I can't think of any other

1 factual clarification that I just wanted to have. Is there
2 any other facts in which it's worth having a discussion to
3 erase any doubt as to what is actually going on as a factual
4 matter?

5 MR. ZIPES: Your Honor, I just state this. It is
6 the Debtor's and the Committee's burden, and to the extent
7 they're talking about a privacy policy and referring to a
8 privacy policy, that --

9 THE COURT: Do you have reason to believe this is
10 a -- there's a different privacy policy?

11 MR. ZIPES: Your Honor, I believe that there is a
12 more recent privacy policy. My office has --

13 THE COURT: Well, then discuss that with the
14 Debtors, right? This is not trial by ambush, so I
15 understand whose burden it is, but judges don't like to
16 decide something based on erroneous facts, so you'll get me
17 the right facts, and then I'll make a ruling. So why don't
18 you have that discussion now, and just knock on chambers
19 when you're ready.

20 (Recess)

21 THE COURT: Please be seated. I want to make sure
22 that our crack court staff has a chance to get everything up
23 and running. Are we good to go? All right. Thank you very
24 much.

25 All right. So as to the factual record, there

1 were one or two issues that were sort of floating in the air
2 before I left the bench, and so obviously we're all trying
3 to get it right. People may agree or disagree in the
4 result, but we never want to do something based on
5 inaccurate facts if we can avoid it.

6 So with that, let me hear from the Debtors as to -
7 - as to where things stand.

8 MS. VANLARE: Yes, Your Honor. So I just want to
9 clarify on the privacy policy, and I think we discussed
10 among the parties during the break. Thank you very much.

11 So Mr. Renzi's declaration attaches a privacy
12 policy. That privacy policy is the most recent one. That's
13 the one that's on the website. In fact, that's how Counsel
14 to the Committee obtained it is by downloading it from the
15 website.

16 We do want to clarify that as of the petition
17 date, there was also a privacy policy. It differed slightly
18 from the one that is currently on the website that's
19 attached to Mr. Renzi's declaration. We don't believe any
20 of the changes were implicated in the -- sort of the
21 provisions that Mr. Zipes questioned the witnesses about.
22 However, we would like to admit the policy as of the
23 petition date into the record as well. And that way, Your
24 Honor will have a complete record of not only the most
25 recent policy that's on the website but also the policy as

1 it existed as of the petition date.

2 THE COURT: All right. Any objection from the
3 U.S. Trustee's Office?

4 MR. ZIPES: No objection, Your Honor. And to be
5 helpful with react to the privacy policies, one paragraph
6 was added, so when there are going to be references to the
7 privacy policy, if you look at one privacy policy, it might
8 be the paragraph before that we're referring to.

9 THE COURT: All right. Thank you very much. So
10 if you could hand that up, I'll throw it in my binder.
11 Thank you very much.

12 MS. VANLARE: Thank you.

13 THE COURT: And just to put a finer point on it,
14 what paragraph was added, just so I know how the numbers
15 line up because I see now six says "how we share personal
16 information with other parties," which is what was seven in
17 the discussion we just had.

18 MS. VANLARE: That's exactly right, Your Honor.
19 That's the paragraph that the questioning related to, and it
20 is seven in the newer version. It's six in the --

21 THE COURT: Older version.

22 MS. VANLARE: In the original. I believe -- I
23 think the new paragraph is paragraph 4, but --

24 THE COURT: Four.

25 MS. VANLARE: I'm going to confirm that.

1 THE COURT: Or the numbered paragraph 4 in the
2 exhibit that we already have is new compared with the old
3 one, how we collect data.

4 MR. ZIPES: I would have no objection to using the
5 redline as an exhibit as well (indiscernible).

6 THE COURT: So let me make it simple though. Was
7 there any change to the paragraph we were discussing?

8 MS. VANLARE: There is -- I think the word --
9 instead of privacy policy, it says privacy notice.

10 THE COURT: So well then let me ask it a different
11 way. Is there any -- any party want to make an argument
12 that there's some change to the policy that impacts any of
13 the arguments that have been made so far today or are going
14 to be made in connection with the motions pending in front
15 of me?

16 MR. ZIPES: No, Your Honor.

17 THE COURT: All right. So we have a distinction
18 without a difference in this -- for purposes of our
19 proceeding today. So I'm not going to then ask that this be
20 introduced as an exhibit except to the extent that the
21 Debtors think that might be useful for other purposes down
22 the road because I don't know that it matters for purpose of
23 today.

24 MR. ZIPES: Your Honor, I was just -- and I don't
25 want to interrupt, but I think it is relevant in that it

1 shows that parties that are reviewing the privacy policy
2 often have confusion on what they're actually reviewing, so
3 that --

4 THE COURT: I'll admit it. What do you want me to
5 call it?

6 MS. VANLARE: Joint Exhibit 18, Your Honor.

7 THE COURT: Joint Exhibit 18. All right. I'm not
8 sure how probative it is, I confess, but it's in for
9 whatever purposes, as often famously said in bench trials by
10 judges all across the globe.

11 All right. So with that, anything else before we
12 turn to oral argument?

13 All right. With that, I would just say for
14 purposes of argument, maybe folks use the podium. And it is
15 the Debtor and the Committee and the Ad Hoc's motion, so I
16 assume that I should hear from them first unless you all
17 have agreed on a different presentation where it makes sense
18 for Mr. Zipes to set the stage as to what's still a live
19 objection and why.

20 Mr. Zipes, do you have a -- does anybody have a
21 preference?

22 MS. VANLARE: Your Honor, I think that's exactly
23 what we had in mind. I think we were thinking Debtors,
24 Committee, anyone else, mister -- then Mr. Zipes, and then
25 we would reserve the right for a brief reply or rebuttal.

1 THE COURT: All right. That's fine. Please
2 proceed.

3 MS. VANLARE: Okay.

4 THE COURT: And I will start, as I always -- I
5 usually do in these circumstances. I've read everybody's
6 papers, so I will not take the fact that you don't slavishly
7 include every point that you raise to be in any way a
8 concession or that you're not pursuing that point but just
9 you're going to -- I take this to be highlighting the
10 important stuff and particularly addressing any of the
11 testimony, so all your papers will be considered.

12 And with that, Counsel, take it away.

13 MS. VANLARE: Thank you, Your Honor. Jane
14 VanLare, Cleary Gottlieb Steen & Hamilton on behalf of the
15 Debtors, and I will be brief, Your Honor.

16 So first, I just want to clarify the Debtor's
17 position because there's been a number of remarks that have
18 been made today.

19 We did in our original set of redaction motions --
20 there are a number of them -- we did initially seek to
21 redact individual names and contact information and
22 institutional contact information. We subsequently, after
23 discussions with the Unsecured Creditor's Committee as well
24 as the Ad Hoc Group and other creditors, we have sought to
25 redact all institutional and creditor names and contact

1 information.

2 And today here -- today, Your Honor, we do join,
3 and we are supportive of the motion that the Committee filed
4 seeking broad redactions for both names and contact
5 information for all the reasons that articulated in their
6 motion and in the declarations as well as during today's
7 hearing.

8 THE COURT: Let me just ask you about that, and
9 maybe the Committee is the right party, but I'll just tee it
10 up now.

11 There's a lot of talk about individual concerns in
12 connection with the institutional investors, customers,
13 lenders, be that as it may. So my understanding is that --
14 am I right in saying it's not as if there's going to be any
15 individual information submitted with the bankruptcy court
16 here for these individuals. It's just that those
17 individuals can be identified once you identify the
18 institutions. Is that right?

19 I ask because sometimes you just say here's an
20 institutional creditor contact person, so I wasn't sure if
21 it was directed to -- well, even, "Judge, even if you leave
22 the institutional name of the lender/customer, just redact
23 the name of the individual listed as the point of contact,"
24 which is a common thing for, say, you know, proof of claim.
25 So what -- I just want to understand the position.

1 MS. VANLARE: Yes. Thank you, Your Honor, because
2 that is an important point. I mean, of course -- again, I
3 think the Committee has sought to redact the institutional
4 name as well as individual names. We are supportive of that
5 request. If Your Honor were not inclined to permit the
6 redaction of institutional names, we would absolutely seek
7 to -- seek permission to redact the individual contact
8 person or at the very least allow some alternative to be
9 noted, for example, in the schedules or creditor list
10 because, again, we were contacted by counsel and by
11 creditors that this was an issue that was of great concern
12 to individuals. In other words, even those who were part of
13 an institution --

14 THE COURT: Right.

15 MS. VANLARE: -- but just having their name as
16 somebody associated with that institution was problematic.

17 THE COURT: All right. And again, I'm just trying
18 to make sure I understand the different positions and
19 arguments. Am I also right in saying that if for purposes
20 of ruling I decide that this is confidential business
21 information for purposes of essentially being a customer
22 list, something that's valuable in a sale, ongoing business,
23 that I don't even need to reach 107(c), which is the privacy
24 issue and some of the more distinct nuances between investor
25 names and individuals?

1 MS. VANLARE: I think that's right, Your Honor. I
2 was actually going to get to that as well, that you have
3 basically two bases to make this ruling.

4 THE COURT: All right. With that, I'll get out of
5 your way and let you -- let you give your presentation. I
6 just wanted to make sure I had those issues nailed down.

7 MS. VANLARE: Thank you. I also just wanted to go
8 back to some of the issues that we talked about at the last
9 hearing and, just so the record's clear and Your Honor's
10 rulings are clear, we did discuss certain categories of
11 parties -- before we even get to sort of institutions and
12 individuals more broadly, we talked about M&A counterparties
13 and litigation or regulatory counterparties, and I believe
14 Your Honor had indicated at the last hearing that so long as
15 there was a reasonable basis for redacting those types of
16 parties that it would be -- that it was permissible to
17 redact them for the reasons that we articulated at the last
18 hearing.

19 THE COURT: Yeah. I had understood for potential
20 counterparties as for litigation parties in proceedings,
21 inquiries that were expressly confidential, filed under
22 seal, or received instruction to keep confidential, that
23 those or things not disputed by the U.S. Trustee's Office
24 subject to verification, right. It wasn't a blank check.
25 It was, "Gee, could you give us some information about that

1 particular proceeding?" for example, but that we didn't --
2 those were essentially removed from the dispute here.

3 And so I think that that's right because I have
4 for my notes for both of those, it's just stated that those
5 conditions that the U.S. Trustee's Office didn't believe
6 there was an issue with that.

7 But let me ask Mr. Zipes just in an abundance of
8 caution if he would be kind enough to pop up and just
9 confirm the that's the case.

10 MR. ZIPES: Confirmed.

11 THE COURT: All right. Thank you. All right.

12 MS. VANLARE: Okay. Thank you, Your Honor.

13 We also discussed at the last hearing our
14 argument, and I won't -- I'll take Your Honor's instruction.
15 I won't reargue the things that we raised in our papers, but
16 foreign creditors, there is sort of an additional
17 consideration for foreign creditors who are subject to
18 privacy regimes that could potentially subject the Debtors
19 just --

20 THE COURT: So I was going to ask you about that.
21 There's -- it's kind of an interesting issue that seems to
22 be dealt with in different ways.

23 So I think it's pretty clear that there are no
24 courts -- U.S. courts that are going to say that we're bound
25 by whatever privacy regime may exist in the foreign

1 countries. But if I remember right, Judge Garrity
2 essentially used comity as a way of essentially looking at
3 that issue.

4 And I'd be curious to get your take -- and this is
5 opening a bit of a can of worms -- on the Celsius privacy
6 ombudsman's report that's contained as an exhibit because it
7 goes through a whole host of things for purposes of the
8 sale, including looking at where the customers are, and
9 therefore what the majority or a substantial portion of the
10 customers and creditors are -- what regimes they're subject
11 to. So in other words, you don't have, "Well, we've got,
12 you know, 10,000 customers. We've got one in the EU, but
13 we're spending a lot of time talking about the EU." On the
14 other hand, if you have 90 percent of them are in the EU,
15 shouldn't we be talking about the EU privacy regime?

16 So I guess I had -- I'd be interested in your
17 comments about what the ombudsman was doing and how that
18 sort of fits into the analysis here, which is much more of a
19 threshold issue, but part of me was wondering if, as a
20 threshold matter, there's a ruling that resolves some issues
21 that the privacy -- is there going to be a privacy ombudsman
22 here? And if so, are some of these issues things that
23 should be considered in the context of a privacy ombudsman
24 would seem to be a much sort of nuanced analysis.

25 MS. VANLARE: Mh hmm.

1 THE COURT: So I was curious how to take that, and
2 there's a whole bunch of ways you could frame that question.
3 But that's something I really would appreciate your insight
4 into.

5 MS. VANLARE: So Your Honor, I think we have had
6 some discussions about a privacy ombudsman with the Office
7 of the U.S. Trustee. I think to date, we've said that some
8 of that is premature because we -- we're not that far along
9 in the sale process.

10 I think in terms of the foreign creditors, you
11 mentioned comity. Of course that's, I think, one important
12 consideration. I think another consideration that sort of
13 is separate and apart from foreign law and foreign courts
14 and respect that you might give to those foreign laws and
15 foreign courts. It's just the issue of the impact on the
16 Debtor's estate.

17 And so one of the things we argued in our papers
18 is that violation of certain foreign regimes may result in
19 fines and additional costs for the Debtors and I don't -- I
20 think for that, I don't think you need to necessarily
21 consider issues of foreign --

22 THE COURT: I agree that that's a concern. I was
23 struggling I think last time and haven't gotten any further
24 in terms of where that fits for today's purposes, right? It
25 certainly seems to fit when the privacy ombudsman is

1 considering the sale because they're saying what's best to
2 maximize value, and so you can consider a lot of different
3 things. It seems to be the parameters of that inquiry are
4 much broader, but we have essentially the 107 straitjacket
5 here, so I'm try -- it's a legitimate concern.

6 I don't know the range of penalties that folks
7 could be subject to, so the analogy I was teasing my way
8 through is HIPAA, right? And if you -- if you violate HIPAA
9 for healthcare information, you have a serious problem. And
10 you have substantial economic exposure, and I know Europe
11 has a very different example -- paradigm for privacy, and I
12 know they have a privacy ombudsman, I believe is the title.

13 And so what thoughts do you have about where that
14 fits into the mix for today?

15 MS. VANLARE: Well, Your Honor, I think I would
16 say that we don't need to get to any of those issues if Your
17 Honor finds that there's been a sufficient showing that
18 names can be redacted for all the reasons that have been
19 articulated. We don't need to get into this issue of
20 foreign regimes. We don't need to make this distinction. I
21 mention it merely to say that it's out there, and we
22 certainly want to preserve those arguments.

23 THE COURT: Right. No, that's a fair -- that's a
24 fair point. It does seem to highlight the interaction with
25 statutes passed at different times and the -- how these

1 issues were manifest or not at the time of the passage of
2 those statutes.

3 So all right. Thank you for your comments on
4 that.

5 MS. VANLARE: So Your Honor, now moving into I
6 think what you had mentioned earlier, which is the two
7 bases, I think -- at least two bases that Your Honor has to
8 approve the redactions that have been sought here. One is
9 the sort of business justification, the fact that as has
10 been shown through the declarations as well as the testimony
11 of Mr. Tichenor and Mr. Renzi that the information, the
12 names, and the contact information is a valuable asset for
13 the Debtors, particularly important in the context of these
14 cases where that asset is for sale, among other things. We
15 are in the middle of a sale process trying to maximize value
16 for the estates for our creditors, and I think that there's
17 been ample evidence presented in the record that this is an
18 important asset that should be preserved.

19 The second basis that really goes to 107(c) is the
20 threat that disclosure of this information presents to the
21 individuals, and I know -- and we've talked about this at
22 the last hearing -- that 107(c) is worded in terms of
23 individuals. But I think as we also discussed at the last
24 hearing, and I'll note again, it doesn't limit the
25 protection to only -- to instances where the individuals are

1 themselves the creditor. It simply says that where there's
2 a threat of two individuals that 107(c) permits the Court to
3 protect that information. We think that exists today for
4 this case.

5 And again, if you look at the declarations that
6 were submitted, Mr. Renzi and Mr. Tichenor -- Mr. Renzi in
7 particular, and the testimony goes in detail as to many of
8 the threats that are posed by this information, of course
9 for individual creditors but also for those individuals who
10 are the individuals that are part of the institutions who
11 are themselves creditors.

12 And you know, there've been many types of threats
13 that have been highlighted, obviously physical threats,
14 threats of kidnapping, threats of injury as well as
15 financial risks and other types of risks through fishing
16 attempts and the like. And the record is quite full of
17 examples where this has occurred to people in these types of
18 cases.

19 And just -- I think we made this distinction
20 before, but again, when we talk about institutional
21 creditors, particularly in the crypto industry, there are
22 many institutional creditors where the -- there may only be
23 a few individuals where the home address is used as the
24 business address, so there's also this sort of hybrid --
25 what I would call a hybrid type of creditor where even in

1 the sort of most conservative definition of institution
2 versus individual, those concerns are highlighted.

3 But again, I think you don't need to -- I think
4 107(c) permits Your Honor to protect -- again, to allow the
5 redaction of institutional information because in fact of
6 the dangers to individuals who are part of those
7 institutions.

8 Now, Mr. Zipes had brought up during the
9 questioning examples of two filings where folks identified
10 themselves. And of occurs Your Honor, people are free to
11 identify themselves. They're free to file things on the
12 docket. There free to show up at the hearing, but I think
13 that what we're talking about here is involuntarily
14 disclosure and again, in particular given the threats that
15 people face.

16 Finally, I thought it was very instructive what
17 Mr. Zipes said. You know, and he was talking about contact
18 information of individuals, and he said that he has no
19 objection to names of individuals if they -- if they fall
20 under a threat category, and that really -- the issue is
21 that of showing.

22 And I think that's really important because I
23 think there is actually agreement in that. We too agree
24 that individuals who fall under a threat should be
25 protected. It's just that we think that there has been

1 sufficient showing that in this case -- as in many crypto
2 cases but in this case in particular -- that group is very
3 large, and it should not be limited to -- and the burden
4 should not be placed on individuals to contact the Office of
5 the U.S. Trustee to identify themes about a threat which
6 they may be aware of or simply are mindful of, but I think -
7 -

8 THE COURT: Well, to put -- to put the bankruptcy
9 point on it, isn't what -- that what the Committee is here
10 for, right, to represent the interest of unsecured creditors
11 to -- I mean, that's their -- I mean, that's probably best
12 address to the Committee, but that's the point, that they
13 don't have to come forward because the Committee represents
14 their interests.

15 MS. VANLARE: That's exactly right, Your Honor.
16 And I think the Committee has certainly said -- and I'm sure
17 their counsel will underline after I finish -- that they've
18 heard from many, many creditors.

19 But again, I just go back to this issue. I don't
20 actually think that there is a disagreement in terms of if
21 there's a threat, this should be protected. And we would
22 ask Your Honor to take note that the record is replete with
23 examples and that the showing has been made that parties who
24 are involuntarily subject to these proceedings, be it in
25 their individual capacity or as part of institutions, are in

1 fact subject to these types of threats.

2 And again, it's been said but I'll just note
3 because a lot of people say, "How is crypto different?"
4 Right? Isn't any large case -- don't we have these issues
5 in any large case where you have creditors, and nobody ever
6 wants their name out there?

7 I do think -- and I think Mr. Renzi said today
8 during his testimony, you know, the fact that these
9 transactions, they're quick, they are -- contain and relate
10 to very large asset transfers that are -- that are virtually
11 instantaneous unlike other types of assets that may take a
12 long time. And they are very difficult, if not impossible
13 to reverse. There's not a financial intermediary when you
14 look at crypto assets, so there are very specific
15 differences in the crypto industry that I think do
16 distinguish this, and the reason it's relevant is because it
17 really amplifies the threat that people experience, again,
18 who are involuntarily part of these proceedings.

19 Thank you, Your Honor.

20 THE COURT: All right. Let me just check my list
21 here as to any questions.

22 So just to follow up on the conversation before,
23 so I understand the folks that -- who are -- who are
24 entering into agreements here that fall into the
25 customer/lender category, which is the folks we're talking

1 about are the folks who would've entered into the master
2 agreements of the type that were included as an exhibit.

3 MS. VANLARE: That's exactly right, Your Honor.

4 THE COURT: All right. And so I assume then that
5 essentially distinguishes the clickthrough privacy policy,
6 which means that allows you to interface with the website
7 and doesn't necessarily commit you to anything in terms of
8 an actual -- of being a counterparty to any agreement, but
9 so you might have a lot more -- I assume you'd have to have
10 a lot more people who are subject to that, but they may
11 never show up on a list in anything in this case.

12 MS. VANLARE: That's right. The privacy policy
13 was more broadly applicable than the lenders -- the specific
14 lenders who entered into MLAs and who are now the creditors
15 in these cases, or some of the creditors in these cases.

16 THE COURT: All right. And so that leads me to a
17 more general question is are there any different tiers of
18 creditors that I should be aware of in terms of teasing my
19 way through this?

20 We've been talking about the lender/customers,
21 right? So I get that. Are there -- is -- are there other
22 creditors that -- who wouldn't be subject to this kind of a
23 concern that -- for which you're not seeking protection or
24 have an alternative basis for seeking protection?

25 So in other words, we're talking about -- I know

1 we've been talking about all individuals, all this, all, but
2 is it all -- is the real category all folks who are
3 lenders/customers, and that may not include everyone who's a
4 creditor? I mean, I assume someone somewhere has an office
5 and bought a copy machine from, you know, Xerox. And if
6 Xerox submits a proof of claim that you're not seeking
7 protection for those folks.

8 MS. VANLARE: That's exactly right, Your Honor.
9 And I think in our schedules, somebody can correct me, but I
10 don't believe we actually redacted vendors. So we think of
11 those folks as vendors because we don't think the same kinds
12 of issues apply as they do to the lenders.

13 THE COURT: Right. So really, the category here
14 is lenders/customers.

15 MS. VANLARE: Yes. Yes.

16 THE COURT: All right. All right.

17 MS. VANLARE: And just to -- you know, in terms of
18 -- it's -- they're institutional lenders, they're individual
19 lenders. Of the individual lenders, some are accredited.
20 Some are not. And I'm not sure -- I'm actually not sure
21 which -- you know, whether somebody is a creditor or not. I
22 would say these risks, for different reasons, are just as
23 important whether or not you're accredited or not.

24 THE COURT: All right.

25 MS. VANLARE: But just to clarify the full scope

1 of the lenders.

2 THE COURT: All right. Thank you very much.
3 Anything else, Counsel?

4 MS. VANLARE: No, Your Honor. Thank you.

5 THE COURT: All right. So anyone else who wants
6 to speak in support of the requested relief?

7 MR. PESCE: Thank you, Your Honor. Gregory Pesce,
8 White & Case, on behalf of the official Committee.

9 We've candidly probably killed a lot of trees or
10 computer memory sticks with this issue today, so I will try
11 to keep this very brief.

12 When -- as has been noted, when the Debtor filed
13 the motion originally, the Committee hadn't yet been formed.
14 After the Committee was formed and after counsel was hired,
15 this amidst all of the very difficult issues that we had in
16 the case was identified to us by the Committee and the
17 broader community of Genesis users as an issue of paramount
18 concern that needed to be addressed.

19 And as you heard from Mr. Renzi today, there was
20 an outflowing of commentary and concern from the user base
21 when we filed our motion, and then we had a town hall where
22 it really was just overflowing with fear and concern from
23 these aren't Voyager users, these aren't Celsius users,
24 these aren't FTX users, these are Genesis users.

25 So these are people that actually use the platform

1 and the other Genesis-affiliated platforms and felt a
2 significant concern. In light of all of that, we spoke to
3 the Debtors, and we were pleased that they have adopted our
4 concerns in this regard, and that there was a course
5 correction of sorts to get us to where we are today.

6 Just briefly on the merits, the -- first and
7 foremost, Section 107(b) covers confidential, sensitive
8 commercial information. There's been a lot of talk today
9 about 107(c) and who's an individual that's covered, and
10 when does it apply in other circumstances. First and
11 foremost, though, under 107(b), you heard from Mr. Renzi who
12 is running the sale process in the two competitor crypto
13 businesses about the importance of keeping this information
14 confidential. You heard from the Debtor's witness about the
15 need to keep the information confidential so that we don't
16 dissipate the value of this in part of the sale process, or
17 as what the Creditors get in a reorganization scenario.
18 There was no question that this has -- this is very
19 important information and is needed to preserve this
20 important asset for those processes.

21 Focusing just on account holder recoveries and the
22 value of the platform, though, would obscure what is also a
23 very important issue of the personal circumstances of
24 Genesis' users, and particularly the individual users. You
25 heard from Mr. Renzi today recounting the true fear and

1 concern that members of our Committee have and have been
2 related to them by others, as well as it was relayed during
3 this town hall meeting that we had to explain this concept
4 to people -- to all of the users, both here and abroad what
5 was happening.

6 There is a real demonstrated risk to the
7 individual users. And then as to the institutions,
8 institutional Creditors, of course, are not specifically
9 covered by 107(c). However, at bottom institutions, like
10 any entity created by law, act through individuals. And the
11 individuals associated with the institutional Creditors are
12 readily available as Mr. Renzi testified today to being
13 found. And those are the individuals that control the keys,
14 that control the crypto, that control the relationships
15 between those institutional Creditors and Genesis.

16 THE COURT: So let me ask you a question about
17 that. Obviously if you have a business model and you're an
18 institution, you are often -- maybe perhaps not uniformly,
19 but you're certainly often in the business of letting the
20 world know you're out there --

21 MR. PESCE: Mm-hmm.

22 THE COURT: -- so that you can conduct business.
23 And so how do I understand that vis-a-vis the institutional
24 Creditors? So I get the individuals. Individuals don't
25 necessarily put themselves out there. When they invest,

1 they want to keep their portfolios separate from what's out
2 there in the world, but these are companies. And what am I
3 -- how do I understand that intersection for purposes of
4 107(c)?

5 MR. PESCE: Right. So as you noted, 107(c) has
6 its own issues. I'll just, you know, reamplify that under
7 -- we don't have to get to 107(c) given the 107(b) angle.

8 THE COURT: No, I --

9 MR. PESCE: Yeah.

10 THE COURT: You had me --

11 MR. PESCE: Yeah.

12 THE COURT: -- at hello, and then we're going to
13 look at 107(b) as well. And secondly, I don't think that
14 the statute in the current world we live in is ideal.

15 MR. PESCE: Sure.

16 THE COURT: I'll leave it that way.

17 MR. PESCE: So it -- institutional Creditors in
18 this case are -- some are true businesses like large
19 investing enterprises that, through one reason or another,
20 found themselves involved with Genesis. Many of the so-
21 called institutional Creditors, though, are really just
22 single-member or two-person LLCs or similar types of legal
23 entities that exist outside of the United States that were
24 formed for purposes of structuring personal investments.

25 So why they're an institution, it's kind of an

1 institution in name only. They're really an individual or a
2 family just sort of structuring their investments that way.
3 As to -- you know, but whether you're a small institution or
4 a big institution, and we have a few big institutions, you
5 know, on our Committee that have spoken to us quite a bit
6 about their concerns in this regard, they -- you know, the
7 big institutions of course put their names out there to get
8 investors and to get customers, and then those investments
9 were sort of, you know, reinvested in a way in Genesis.

10 You know, the concern that their employees would
11 be threatened or harmed or held hostage or, you know, held
12 up to get access to the keys or to the crypto that those
13 organizations may control really didn't exist when, you
14 know, it was business as usual. And Genesis was able to
15 satisfy its debts and its business relationships with those
16 institutional Creditors. To say nothing of now when, you
17 know, as a matter of law, they literally cannot do business
18 with them due to the pendency of the automatic stay.

19 So that in turn has led to -- that in turn I think
20 helps illustrate the need for this as to the institutional
21 creditors as well, which is they're dealing with a situation
22 where their personnel are at risk due to their own
23 distraught or disappointed customers looking for a way to
24 get their money out of those institutional Creditors, but
25 they can't because Genesis is holding their assets.

1 THE COURT: But those customers know who they are
2 already, don't they? I mean, right? So I don't know that
3 we're -- we'd be heightening the risk there. I guess I'm a
4 little confused. Certainly Mr. Zipes' questions had the --
5 one or two of them had the implication that was different
6 than yours, which is because they can't do business, there's
7 no real risk now of anybody getting any access of any
8 trades, and you can't -- your accounts are frozen.

9 So I guess I'm just struggling if -- why not being
10 able to conduct business as usual makes this worse than it
11 would be otherwise. Because the sense I got from the
12 various information about threats --

13 MR. PESCE: Yeah.

14 THE COURT: -- seem to basically be targeted to,
15 well, we know it's a -- it's like diamonds in the sense of
16 it's untraceable --

17 MR. PESCE: Yeah.

18 THE COURT: -- it's an asset that can be
19 converted. And then once you get it --

20 MR. PESCE: Yeah.

21 THE COURT: -- you get it, and so once you know
22 that the individuals -- for the individuals that these folks
23 are investing in this --

24 MR. PESCE: Right.

25 THE COURT: -- that makes you a target. But for

1 the -- I don't know why the current status quo as opposed to
2 six months ago or eight months ago --

3 MR. PESCE: Yeah.

4 THE COURT: -- would be any different. So am I --
5 what am I missing?

6 MR. PESCE: Yeah. Let me -- I'll just give you an
7 example from a member of, you know, the Creditors Committee
8 that was shared with me, and I won't share the specific
9 name. But you know, they have their own customers, and
10 those customers were effectively unable to withdraw their
11 funds from that organization and -- because the money was
12 tied up there. And they, you know, said to me, look, we're
13 really concerned that when we tell them the organization
14 can't give it, that people might find people associated with
15 the institution and say -- and try to use that as a back
16 door way to coerce them to get it.

17 THE COURT: But they already know that
18 information, right? In that example, those folks -- there
19 may be a --

20 MR. PESCE: Sure.

21 THE COURT: -- serious threat, right?

22 MR. PESCE: Yeah.

23 THE COURT: Again, I'm not -- there certainly
24 seems to be a lot of literature about all this from
25 institutions in the executive branch, but -- and I don't --

1 I'm just trying to figure out whether we're exacerbating a
2 problem. And --

3 MR. PESCE: Yeah.

4 THE COURT: -- again, it seems to be a problem,
5 but I don't know that for the institutions that are in that
6 category that we're making it any worse.

7 MR. PESCE: Yeah.

8 THE COURT: I might be making it worse by being
9 the bankruptcy judge writing -- presiding over a case where
10 there's an automatic stay, but I don't know that the --

11 MR. PESCE: Yeah.

12 THE COURT: -- release of the name would change
13 the calculus.

14 MR. PESCE: I think the predominant issue with the
15 institutional Creditors has to be the 107(b) angle. I think
16 that as to the 107(c), we want to ensure that a bad
17 situation does not get worse and that we try to mitigate the
18 access to the institutional Creditor information so that it
19 doesn't lead to people taking matters into their own hands
20 and to individuals or to employees associated with those
21 institutional Creditors.

22 THE COURT: All right.

23 MR. PESCE: So Mr. Renzi, like I said, you know,
24 is running these processes for two competitors. He's
25 overseeing -- or he's working to -- in collaboration with

1 Moelis on this in this case and has been involved with
2 basically every one of these and presented very competent
3 testimony in that regard. We think that on the merits we
4 are already there.

5 Let me speak briefly, though, on a couple of what
6 I think are the major issues that have come out in the
7 questioning and in the briefing here. I think Your Honor
8 and then the U.S. Trustee definitely hit on an important
9 question, which is if the relief granted here or if the
10 relief requested here is granted, well, where does it end?
11 Is this just a slippery slope?

12 And you know, I think you have to look at the
13 nature of this business, which is in itself unique. Nine
14 months ago there wasn't a cryptocurrency bankruptcy, and
15 today literally almost the entire industry has been
16 subjected to filing for bankruptcy or being large Creditors
17 in this bankruptcy. But taking a step back here, the assets
18 that are subject to these bankruptcy proceedings are very
19 unique.

20 As Mr. Renzi noted, we have your -- the motto is
21 when you have the keys, you have the coins. Crypto is
22 fundamentally a bearer asset. So when you hold the key or
23 the account information to get the crypto, you effectively
24 can get the crypto. This isn't like some of the privacy
25 issues that have come up in the district recently involving,

1 you know, supermarket coupons or airline tickets or other
2 kinds of goods, which could either be canceled through
3 computer systems or are of, you know, kind of trivial
4 liquidation value.

5 These are bearer assets that in and of themselves
6 have value as bearer assets. If you steal someone's, you
7 know, bearer bonds back in the day, it wasn't really the
8 face value of the bond that was, you know, important, it was
9 what you could present it for redemption. This is in the
10 same way.

11 Second, because it is a bearer asset, the crypto
12 ecosystem, for better or worse, has been susceptible to bad
13 acts by criminal elements, you know, organized crime, and
14 confidence schemes. On a personal note, my entire family
15 inundated me this morning with the clips from John Oliver's
16 show last night highlighting just the -- one of the defining
17 aspects of the crypto industry is just the overlap and the
18 extensive intersection between fraud, misconduct, and
19 criminality that affects the ecosystem. And that goes to
20 people using it as a way to perpetrate crimes.

21 And then third, you know, you have a bearer asset.
22 You have an industry that's susceptible to this type of
23 criminal manipulation. And third, you have not speculation,
24 but just literally in other bankruptcy cases in this
25 district extensive evidence of when the names get out there,

1 people start to have bad things happen to them.

2 So you know, I'm involved in the Celsius
3 bankruptcy as counsel for the Creditors Committee. There we
4 respectfully disagree with Judge Glenn's decision in that
5 case, but it's a useful test case for what you have here.
6 There are no notices of phishing attempts in BlockFi and in
7 Voyager, but in Celsius you have rampant notices of
8 phishing, involvement by the FBI and other law enforcement
9 as a result of the disclosure of the customer names. And
10 that's, we don't think, a coincidence. It is an obvious
11 risk of what happens when this relief is not granted.

12 So what is the limit? There is a clear limit that
13 could be applied here. When you have a bearer asset that's
14 industry susceptible to this type of -- these types of
15 issues, I'm not sure of one outside of crypto, but in crypto
16 itself that is sort of the example that you have.

17 The -- next, there was much made of the accredited
18 investors. I think as Ms. VanLare said, you -- the --
19 whether you're an accredited investor or a non-accredited
20 investor, you know, that's -- you were signing a form
21 document effectively to make a loan or get property from
22 Genesis. But whether someone is an accredited investor or
23 identifies with an accredited investor, that doesn't mean
24 that the person is not entitled to be free from physical or
25 financial harm at the hands of criminals that are trying to

1 take over and abuse this type of technology.

2 The privacy policy, you know, I think we did a lot
3 of discussion about that, but just suffice it to say the
4 privacy policy had exceptions for selling assets or
5 transferring to other entities within the Genesis complex.
6 But because there is one exception to -- for a particular
7 use, that doesn't mean it's a back door to just releasing
8 the information for any reason.

9 In fact, as it came out in the testimony, that is
10 not -- that is actually what it says is not the case. The
11 information's not being released just for any purpose, just
12 for those specific purposes.

13 And then finally, you know, just building on sort
14 of a comment you made a couple of minutes ago and that kind
15 of goes throughout the U.S. Trustee's objection, you know,
16 is an amendment needed to 107? Is an amendment prudent?
17 And then what is the overlay of foreign law? It may be
18 prudent for a lot of reasons to clarify 107 given the nature
19 of society and the economy we live in, but we don't think
20 that what we're asking for today is outside the bounds of
21 it.

22 Like I said, under 107(b), sensitive commercial
23 information that should be redacted just like other
24 competitive information, whether it's DIP fees or customer
25 names or other things like that, these lenders are the

1 business of Genesis, and their names and information are
2 particularly important. So we don't think an amendment is
3 necessary despite what has been suggested.

4 And then as to foreign law, like was talked about
5 a few minutes ago, we don't think that is dispositive on the
6 issue. I think it is a useful data point to understand some
7 of the issues, but you know, we are, to be clear, not
8 hanging our hat that what a bureaucrat in Brussels said
9 applies in the EU dictates the outcome here. We think the
10 outcome here is dictated by the U.S. Bankruptcy Code and not
11 what happened over in -- whether it's in Brussels or some
12 other foreign capital.

13 So with that, we urge the Court to grant our
14 motions, and I thank you for your time today.

15 THE COURT: All right. Thank you very much.
16 Anything from the Ad Hoc Group?

17 MR. ROSEN: Thank you very much, Your Honor.
18 Brian Rosen, Proskauer Rosen on behalf of the Ad Hoc Group.
19 Your Honor, as you are aware, the Ad Hoc Group represents
20 over 75 Creditors holding over \$2.1 billion of pre-petition
21 date value claims against the Debtors, and this comprises
22 over two-thirds of the top 50 Creditors in the case. And
23 Your Honor, there's been a lot of discussion about the
24 master loan agreements.

25 And just for the record, all of our parties are

1 parties to those respective master loan agreements. They
2 all executed them. And while there are term sheets that are
3 attached to those master loan agreements, which go through
4 the details of their respective loans to GGC, they are all
5 parties to the master loan agreement, which have the
6 confidentiality provisions that you had been alluding to
7 before.

8 And Your Honor, as part of that in the discussion
9 about accredited investors, it is our understanding that to
10 qualify as one of the Genesis exclusive lenders, Creditors
11 had to provide proof of over \$10 million in investible
12 assets and make a minimum loans of either 100 BTC, 1,000
13 Ethereum, or 2 million in USD or stable coin loans to
14 Genesis. So Your Honor, these are significantly high net
15 worth individuals or, using what everyone has been talking
16 already, institutions.

17 But in that regard, Your Honor, and I do agree
18 with both counsel to the UCC and to the Debtors,
19 institutions in this instance are maybe not the institutions
20 that one would normally think about as institutional
21 lenders. Rather, as Mr. Pesce went through, Your Honor,
22 they are constructs done for the purposes of making loans,
23 but they are really very, very small entities. Sometimes
24 only person, sometimes a family office, Your Honor, but the
25 disclosure of that information of the institutional name is

1 tantamount to disclosure of the individuals themselves.

2 I have always prided myself on not repeating what
3 a lot of people have said before me, Your Honor, so I'm
4 going to keep to my own mandate here. But it is our point
5 that 107(c) does apply to both the institutional people as
6 well as the individual Creditors.

7 Your Honor made a comment both just today and at a
8 previous hearing, and I want to make sure I state it
9 accurately, about 107(c), and I think your words were at the
10 first-day hearing that the reading of the rule is "be a bit
11 sort out of date", and that is our perspective here, Your
12 Honor. We believe that all of the parties here should be
13 entitled to protection. Their names, their addresses, their
14 information should not be disclosed.

15 There have been some discussions already, Your
16 Honor, about what has happened to people, the risks of
17 random acts of violence against them, seizures, kidnappings,
18 etcetera. We will tell you, Your Honor, that one of our
19 clients had his house stoned as a result of the disclosure
20 initially of information associated with this case. Windows
21 broken and things of that sort, Your Honor.

22 We believe that, lastly, there was one comment
23 made or an effort made by Mr. Zipes to talk about the non-
24 ability to withdraw from the GGC estate. Your Honor, just
25 by the fact of what I noted earlier about the size of the

1 people who are available or capable of being lenders to GGC,
2 they do have financial worth that might not be solely on the
3 Genesis platform. It might be elsewhere, Your Honor.

4 And the disclosure of those names, those -- that
5 information would make them susceptible to the risk that may
6 not be available in the Genesis case, but might be available
7 to them as a whole; the taking of the keys, the extracting
8 from their wallets if you will, Your Honor. So Your Honor,
9 we think the importance or the -- it is irrelevant. Let me
10 put it that way, Your Honor, specifically whether or not
11 people can take assets out of Genesis. It doesn't really go
12 to the fact that they could -- their other assets could be
13 gone to through the disclosure of the information about
14 them.

15 With that, Your Honor, we would support, as we did
16 in our joinder, the motions of the Debtor and the UCC, Your
17 Honor. Thank you.

18 THE COURT: All right. Thank you very much. Let
19 me hear from the United States Trustee's Office.

20 MR. ZIPES: Your Honor, it's been a long day.
21 It's an important issue, and I know how much care this Court
22 gives on important issues. And I'll just state upfront that
23 I don't think you would consider anything other 107 as it's
24 written, notwithstanding personal comments on it, and I'm --

25 THE COURT: No, I do not -- that is not my job

1 description to write laws, and we apply what Congress has
2 given us as does your office. So I realize that your
3 office's arguments are shaped by the law you have in front
4 of you. And you, like me, do not get to choose the terms of
5 debate in that way.

6 MR. ZIPES: And Your Honor, again, in that regard,
7 I -- 107(a), Federal Rules of Bankruptcy Procedure 1007, and
8 the General Rule M399 all point in the direction of full
9 disclosure absent exceptions, which I think the parties are
10 struggling with today. But Your Honor, I just want to go
11 over the facts because I think the facts will dictate this
12 Court's analysis.

13 And the facts are that -- I think we can state
14 there's a generalized fear by customers and Creditors that
15 their information will be misused, but there's nothing
16 specific on the record in this case about --

17 THE COURT: Well, I think you have to be careful
18 with that. I know that your office said early on we haven't
19 heard from Creditors, and we don't really know how they feel
20 about it. I think it's pretty clear we know how they feel
21 about it. That doesn't decide the issue, though, right?
22 But I think there certainly is evidence. I feel like I'm
23 back arguing an immigration appeal in front of the Second
24 Circuit in a prior life where you're looking at Country
25 Reports about what does and doesn't happen.

1 Because we have -- I mean, FTX, there was just a
2 declaration filed by somebody who I think was formerly in
3 the Secret Service talking about that person's take on the
4 security concerns relating to it. And certainly, there's a
5 whole marshaling of all of those kinds of issues in the
6 ombudsman's report in the Celsius case about what to protect
7 or not to protect. So I think we certainly -- the question
8 is what to do with it.

9 MR. ZIPES: Well, so, Your Honor, I just wanted to
10 just complete my thought in that regard and acknowledge that
11 there is a generalized fear out there, but also just to
12 point out that the record does reflect that there are
13 Creditors in this case that have allowed their names and
14 addresses to be disclosed. And although you wouldn't hear
15 that -- we're focusing on evidence in this matter, and there
16 -- I guess that generalized fear is actual disclosures with
17 respect to --

18 THE COURT: Well, so we'll have a handful of folks
19 who've done that, but your office hasn't, and there are lots
20 of good reasons. Maybe you haven't responded to two of the
21 central bits of evidence. One is the declarations from the
22 financial advisors by the -- of the Debtors and the
23 Committee saying that this is valuable commercial
24 information, so putting aside the privacy issues.

25 And two saying that attaching all the specific

1 evidence of various things from the FBI and instances in
2 light of the bearer instruments. I mean, it does pose the
3 question, right? We're not here at the bankruptcy court to
4 tell people how they're supposed to run their business,
5 right? So you could look at this and say that this is not
6 you've subjected yourself to these risks, you've done this,
7 that, and the other thing by buying crypto, and you're doing
8 -- that's not what we're here for, right?

9 I'm not here to judge that. We take the business
10 as the business is. And so considering crypto as an
11 industry, there certainly is a lot out there. And your
12 office doesn't really grapple with that. There may be
13 nothing for your office to grapple with or to say on that,
14 but it's not -- I mean, it's not just the Creditors saying
15 it. It's the FBI. It's all the things in the Ombudsman
16 Report that go through a whole host of concerns that clearly
17 are real. Not everything that is a real concern is
18 cognizable for getting relief from this court.

19 I recognize that's a different argument, though.
20 So to the extent you're saying, well, it's just the
21 customers, it's not. I don't know what to do with it yet.

22 MR. ZIPES: Okay.

23 THE COURT: But so what do you want me to do with
24 it is my question.

25 MR. ZIPES: So Your Honor, again, we're dealing

1 within the statutory -- the statutes here. And we work out
2 it in part by Celsius in that decision. I know the other
3 parties in this case don't necessarily like that decision.

4 And I'll note with respect to the phishing
5 notices, which are being put on in that case, that the
6 record does reflect in that case Judge Glenn, Chief Judge
7 Glenn has not changed his analysis in that regard or parties
8 --

9 THE COURT: So do you think I ignore that, that
10 those don't constitute a risk of identity theft for unlawful
11 injury?

12 MR. ZIPES: Well, Your Honor, I think there's
13 always a risk of -- it's -- as a generalized statement,
14 there's always a risk of fraud in all cases. I could think
15 of completely different industries that have filed for
16 bankruptcy with completely different risks to individuals,
17 not high-worth individuals. There's cases involving
18 mortgages, Debtors that have sold mortgages to impoverished
19 people who didn't necessarily fill out the paperwork
20 properly and have been -- they've been subjected to
21 disclosures in their bankruptcy cases as well. So we're
22 focusing --

23 THE COURT: So your view is that if there is a
24 risk out there, based on the record here, you think it's an
25 acceptable risk?

1 MR. ZIPES: I -- I'm not sure if I'm -- I'm sorry,
2 Your Honor.

3 THE COURT: Well, so the idea that the statute
4 says risk of identity theft or unlawful injury, we only
5 considered the applications that are made to us. And you
6 saying that the statute should be interpreted is a way of
7 saying it's an acceptable risk of injury.

8 MR. ZIPES: No, it's -- the statute has the word
9 "undue" in it, so --

10 THE COURT: Well, but that's -- so you want to say
11 undue, I say acceptable. It's the same thing as a qualifier
12 to say that there's a certain amount of risk in walking
13 around the planet. There's a certain amount of risk in this
14 industry, and therefore it's not an undue risk in your view.

15 MR. ZIPES: Well, Your Honor, I don't know exactly
16 how to respond to a statement that people are in fear of
17 their name coming up.

18 THE COURT: But again, you keep saying a statement
19 by people that they're in fear. So I'm -- I -- listen, I
20 really think --

21 MR. ZIPES: Okay.

22 THE COURT: -- at this point I have an unrebutted
23 evidentiary record as to the commercial information.
24 There's nothing from your office nor was there anything in
25 cross-examination that rebutted the evidence presented by

1 two credible witnesses that this is -- these are customer
2 lists that are property of the Debtor, when they're made
3 public they will lose their value, whether it's in a going
4 concern sale or in an ongoing business. So I --

5 MR. ZIPES: I don't -- Your Honor, I'm sorry.

6 THE COURT: Go ahead.

7 MR. ZIPES: I don't think --

8 THE COURT: I'm trying not to go down a particular
9 rabbit hole --

10 MR. ZIPES: No.

11 THE COURT: -- I guess is the question.

12 MR. ZIPES: And Your Honor, I'm trying not to do
13 that as well, but -- and I might not have been clear on what
14 I'm saying. So every -- just backing up, every bankruptcy
15 case has a Creditor list. Those Creditors could be
16 suppliers. Those suppliers could give valuable information
17 to third parties, and I think that's a generic statement
18 that could be made about every large Chapter 11 case.

19 THE COURT: But what evidence did you provide?
20 You didn't even cross-examine them on that question.

21 MR. ZIPES: Well, Your Honor, the -- I don't know
22 that there's anything controversial about saying that a
23 customer list is --

24 THE COURT: But if it's true that it can be sold
25 in bankruptcy, doesn't it fit squarely within (b)?

1 MR. ZIPES: Not -- Your Honor, that would mean
2 that any information in the Chapter 11 case --

3 THE COURT: No, it would mean any --

4 MR. ZIPES: -- falls under Chapter --

5 THE COURT: -- information that can be monetized,
6 which is different than any information. If it's not
7 valuable -- and again, your office had no cross-examination
8 on that point in terms of whether that view is speculative,
9 how it compared with other cases, but it -- the testimony is
10 that that information's valuable. The testimony is that
11 that information has been treated as valuable in other
12 crypto cases because essentially it's the client list, and
13 that these were people who have a relationship with this
14 Debtor, that if you're going to sell the Debtor, that you've
15 essentially, through time and effort, culled down a list of
16 individuals and institutions who want to do this kind of
17 business who have significant net worth, and that that's a
18 very valuable thing.

19 That's not a -- that's a very traditional answer
20 to, you know, what is probably not a traditional problem
21 when viewed at from other ways. We use a privacy lens, but
22 that's sort of a traditional bankruptcy question. If they
23 couldn't sell it and nobody was trying to monetize it, or it
24 wasn't monetized in other cases, then -- you know, but
25 again, I don't have a single bit of evidence or questions

1 directed to that to undermine the testimony and conclusions
2 made by these witnesses. So it's essentially unrebutted
3 testimony.

4 MR. ZIPES: Your Honor, so the cases including
5 Food Management citing to Orion require extraordinary
6 circumstances in telling me to obtain the protection. I
7 don't think it's controversial in this case or any other
8 case that customer lists, or supplier lists for that matter
9 generally are -- if they're disclosed --

10 THE COURT: But I don't know that my answer would
11 be any different if we came in with Home Depot, Lowes, some
12 other company that did tangible goods and services who said
13 I have -- we have cultivated over time our lead contractors
14 program of large construction firms across the country for
15 whom we are the exclusive supplier. And we don't want our
16 customer lists posted. We're going to sell it when we sell
17 the name. I don't -- why would it be any different than
18 that? And would your office be objecting in that context?

19 MR. ZIPES: Well, if they're on the Creditor list,
20 then yes, I think we would be.

21 THE COURT: All right.

22 MR. ZIPES: But Your Honor, I take your point. I
23 understand the tenor of your comments. I would just -- one
24 of the reasons why you didn't hear cross-examination, Your
25 Honor, I think is it's pretty obvious that when a Debtor is

1 making an argument that a list is publicized, it could --
2 the -- it could deplete the value or reduce the value of the
3 Debtor. That -- that's kind of an unrebuttable statement at
4 that point, and it's --

5 THE COURT: I disagree. There is cross-
6 examination to be had on that to ask people about their
7 prior cases, the prior instances, what exactly do you think
8 it would sell for. I think there's a whole host of cross-
9 examination. Whether it's successful or not depends on the
10 facts and circumstances.

11 MR. ZIPES: So --

12 THE COURT: But I didn't get any questions about
13 it, so it's unrebutted.

14 MR. ZIPES: Well, Your Honor, we have on the
15 records the Celsius, which is part of the amended -- we're
16 referring to Celsius as part of it. When it's convenient,
17 it -- we're talking about Celsius under the 107(c) context,
18 but the Celsius case is a crypto case. And those names are
19 out there, and there's no allegations by the --

20 THE COURT: I know, but there are other judges
21 who've done the opposite, so --

22 MR. ZIPES: No, Your Honor. I understand.

23 THE COURT: -- I have to decide --

24 MR. ZIPES: I understand.

25 THE COURT: -- under the facts and circumstances.

1 And again, I'm a trial judge, so I look at the evidence I
2 have. There could be -- I understand your office's concern
3 that this is a case that will set a precedent that will then
4 be widely invoked because people don't like their
5 information shared. I have two responses to that. One is I
6 think that reflects the changing facts on the ground dealing
7 with the internet and people's information that gets out
8 there and how it's used. That is not really reflected in
9 the statute, that I've got the statute that I have.

10 But the second is that I just look at the evidence
11 in the case that I have. And if somebody can say this is a
12 valuable asset, then it's -- or it can be used to poach
13 customers, strike different deals, undermine the Debtors'
14 economic position, it's no different than an aircraft lease
15 in American Airlines when you settle an aircraft lease issue
16 and you don't want the terms out because it's going to be
17 damaging to your business.

18 MR. ZIPES: Well, but, Your Honor, that's actually
19 -- if we're talking about other cases, that is a good
20 example where all the information is out there except for
21 the bottom line settlement. And to my knowledge, we -- when
22 those settlements come through, they're -- the only thing
23 that's missing in those settlements that no one has an issue
24 with is the underlying dollar amount. They -- the names of
25 the parties and everything else is not a part of those

1 redactions.

2 Your Honor, I hear you, and I'm -- and I -- if
3 your focus is on 107(b), I mean, I can only state that the
4 evidence in this particular case is that there's statements
5 that this could devalue the estate. But --

6 THE COURT: Well, I think there's also statements
7 to say that this asset is being marketed, that it's part of
8 the marketing. There's statements that say that this asset,
9 they're worried that if the information is disclosed,
10 there's no reason that competitors wouldn't try to poach
11 those customers leaving any business to be conveyed to be
12 less valuable.

13 MR. ZIPES: So --

14 THE COURT: There's statements from the witness
15 box here today saying that when you compare -- that somebody
16 who's dealt with other crypto cases, that this is
17 information that is being essentially marketed as an asset
18 in those cases. So this is not a one off in a crypto
19 circumstance. So there are a couple of things there that,
20 again, are not rebutted.

21 MR. ZIPES: And let me -- I respectfully disagree
22 with that statement. And I'll point to a specific example,
23 Your Honor, of -- the Debtor came in, and I think this is
24 evidence and it's not rebutted. The Debtor initially came
25 in with papers prepared by sophisticated counsel and

1 professionals aware that there was a sale process. And this
2 was not a request of the Debtor at the beginning of this
3 case.

4 These are parties that are running the sale
5 process, and they made a decision at the beginning. They
6 could've come in with a motion that asked for the sealing of
7 all this if they thought it was going to be a devastating
8 part of it. I'm talking about 107(b), Your Honor, because
9 this is the --

10 THE COURT: So you're telling me that for not
11 teeing up that issue on the first day that I should penalize
12 a Debtor who is no doubt going to hear on a first day what
13 do we absolutely, positively have to do. And you know your
14 office would object and say that is not a first-day issue,
15 Your Honor. I am 1,000 percent positive as are you that
16 your office would make that position and say that we've got
17 to have a discussion. And you have had a discussion, and I
18 appreciate you've had a discussion. And I can't in my job
19 -- it would be a terrible idea to penalize people for having
20 discussions.

21 MR. ZIPES: Your Honor, I'm not making that point
22 about the first day at all. I'm saying that the Debtor
23 could've -- schedules were not due on the first day, so it
24 wasn't a first-day issue. But what the Debtor was asking
25 for in the first day was a redaction of certain aspects of

1 the Creditors' information, but not all this information.
2 So it -- and you're right, Your Honor. That would've been a
3 discussion to be had with the Creditor's Committee and other
4 parties. But the point here is that you're looking for
5 evidence within this case, and --

6 THE COURT: Well, but it is true as night follows
7 day that debtors come in, they have various views on the
8 first day. They talk to a committee, and the committee has
9 different views.

10 MR. ZIPES: Yeah, but --

11 THE COURT: And then the Committee and the debtors
12 have a conversation. And we all know this is how this
13 works. That doesn't mean that I agree with the Committee.
14 And when we had discussions about institutions in the
15 context of 107(c), as you can tell I have real concerns that
16 that's a bridge too far. But I'm not surprised that the
17 Debtors and the Committee would have a discussion. And the
18 Committee is --after all the people talking to the
19 customers, that's who they represent.

20 And so that doesn't surprise me. It doesn't
21 offend me. It doesn't create any collateral estoppel issue,
22 preclusion, res judicata, judicial estoppel position for
23 purposes of today. It's just an evolving case, which is
24 what we all deal with.

25 Now, again, speaking of what we deal with, I

1 understand your office is dealing with 107 as written. I
2 get it. That's what I'm dealing with, but again, I'm -- so
3 107(b) though seems to present a traditional -- it's a
4 traditional statute 107. It seems to present the
5 traditional response to this particular problem given the
6 evidence that I have.

7 MR. ZIPES: Okay. And Your Honor, I'll move on.
8 I just wanted to make the point that, dealing with the facts
9 in this particular case, and yes, the parties should not
10 necessarily be held to positions that as facts come in and
11 they learn about the case. But I will note that there was
12 that motion filed, and the original request being asked of
13 the Debtor was not what is being asked for today.

14 THE COURT: Right.

15 MR. ZIPES: It's been expanded in that. And --

16 THE COURT: Well, I understand the additional ask
17 is -- was really to invoke 107, not particularly (c) for
18 purposes of the institutional investors. And I think that's
19 probably the hardest argument for anyone to make. I think
20 your papers point out challenges with that argument. I
21 pointed out some challenges with that argument. And what
22 the policy should be is not my job in terms of writing or
23 rewriting the laws of congress, but looking at the statute
24 at (c) doesn't -- I have trouble ping-ponging from the
25 institution will protect the individual, and that the

1 individuals at risk simply will be identifying the
2 institution. It's a hard argument to make based on the way
3 the statute's written.

4 MR. ZIPES: So Your Honor, I know we're focusing
5 on two separate arguments in (b) and (c). And I do think
6 there's, reading between the lines, there is an effort to
7 just try to find a way to block this information, whether it
8 comes under (b) or (c). I think that that is -- there is an
9 effort being done to do that.

10 Your Honor, I just want to just very briefly if I
11 could go through the evidence. And I know I've heard the
12 Court. I'm not going to spend a lot of time on some of
13 these. I just wanted to give the other evidence in this
14 case that the Creditors Committee Notice of Appointment did
15 have names, and it did have email addresses. And my office
16 had asked for email addresses that could be created for this
17 case as a -- as an alternative. That was something that my
18 office has thought about, and we thought it was appropriate.

19 As to the institutions, Your Honor, the
20 institutions are -- they typically have addresses and
21 they're typically part of the public record. So Your Honor,
22 let me move onto other points as well.

23 THE COURT: Well, but let me back up for that.

24 MR. ZIPES: Yep.

25 THE COURT: You're saying -- are you saying that

1 the argument is waived or merely that it's persuasive that
2 this isn't really a problem, the fact that these Creditors,
3 in signing up to be part of the Creditors' Committee, made
4 this information available? Because certainly other people
5 have filed things, and nothing prevents parties from coming
6 forward and saying this might otherwise be entitled to
7 protection, but I'm -- I -- because I've agreed, for
8 example, to do this, I'm making -- I have to make myself
9 available.

10 MR. ZIPES: And --

11 THE COURT: So what is -- I just want to know your
12 precise legal argument. Is it waiver or is it essentially
13 just a persuasive fact that this information in your view
14 isn't that really important?

15 MR. ZIPES: I think it's, Your Honor, that parties
16 have agreed to release this information. So it's not that
17 important if I'm understanding you correctly. It's
18 important, but it's not important to the purposes of this
19 argument. And also the claims, the other documents that
20 were filed, Your Honor, the transfer documents that were
21 filed by parties.

22 So you have a certain narrative that there's a
23 great deal of fear, Your Honor, and that's generalized, and
24 parties are saying that. But there's also evidence. We're
25 looking at evidence. There's evidence that parties have in

1 this very case allowed their information to be used.

2 THE COURT: So is there some source of authority
3 that you want me to rely upon for the level of risk involved
4 here? So I ask because the evidence that I have from your
5 side on this issue is what you just stated that various
6 people have essentially allowed their information to be out
7 there?

8 On the other side, I have what's been submitted,
9 which includes even the Omnibus Report of Celsius, which
10 goes through a whole host of issues. Putting aside privacy
11 law and considering privacy law in other jurisdictions in
12 California and overseas, but it has a section called U.S.
13 Assessment of Opportunities and Risk Through Digital Assets
14 that cites an Executive Report 14067 on ensuring responsible
15 development of digital assets. And it goes on in various
16 detail to talk about issues, and I have similar things that
17 are admittedly, I wouldn't say anecdotal, but they're sort
18 of in this case this happened, in that case that happened,
19 or this person had this happen to them, all of which is bad,
20 but it's hard to quantify.

21 And so your view is that this is not an undue
22 risk. But for purposes of assessing what is an undue risk
23 and how frequent -- I guess the question is how frequently
24 these things happen, what is it that you're citing to other
25 than these claims transfer notices and folks who allow their

1 information to be used for the UCC Notice of Appointment?

2 MR. ZIPES: So Your Honor, I'm -- if we're talking
3 about 107(b) and the --

4 THE COURT: No, I think we segued when we started
5 talking about --

6 MR. ZIPES: Okay.

7 THE COURT: -- risk and fear.

8 MR. ZIPES: So Your Honor, I just -- just I have
9 to state part of your analysis mentions Celsius and other
10 cases. And I don't know that that's a relevant part of the
11 analysis here, but --

12 THE COURT: All right. Then I'll just --

13 MR. ZIPES: -- I understand because of --

14 THE COURT: Mr. Zipes --

15 MR. ZIPES: Yeah.

16 THE COURT: -- I'm supposed to look at evidence.

17 MR. ZIPES: Yeah.

18 THE COURT: So you've drawn a conclusion --

19 MR. ZIPES: Yeah.

20 THE COURT: -- that this is not an undue risk.

21 And you've cited two things to me, folks who put stuff on
22 the docket. I guess it's really one thing, two different
23 instances of it. On the other hand, I have citations to
24 government reports. I have citations to declarations about
25 the risks that have stemmed from owning crypto and being

1 identified as owning crypto because of the unique bearer
2 nature of crypto, and also being identified as essentially a
3 high-net-worth individual. So I have evidence --

4 MR. ZIPES: So --

5 THE COURT: -- on that. And the nature thing for
6 a judge in my position to do I think is to say, well, how
7 frequent is this problem?

8 MR. ZIPES: Right.

9 THE COURT: It's terrible. We never want to say
10 we should --

11 MR. ZIPES: Right.

12 THE COURT: -- never be concerned about these
13 kinds of issues. We also should be concerned. But for
14 purposes of looking at (c), the question is about undue, and
15 that's what I don't think I have any citations. But your
16 office --

17 MR. ZIPES: So --

18 THE COURT: -- is asking me to reach a conclusion
19 essentially this isn't a big enough problem. But what have
20 you given me to allow me to make that conclusion?

21 MR. ZIPES: So Your Honor, I believe the record is
22 clear in this case that notwithstanding these generalized
23 allegations that this -- that no one -- this Court hasn't
24 been approached. There's been nothing on file that this has
25 actually happened in this case. So --

1 THE COURT: So that's the -- so your argument is a
2 legal standard that until something happens to an investor
3 or a customer in this case, I should not consider it --

4 MR. ZIPES: No, Your Honor.

5 THE COURT: -- a problem regardless of what law
6 enforcement officials or others who are testifying about
7 this. So then what is it you want? Again, I'm sorry to
8 give you a hard time --

9 MR. ZIPES: No, I understand, Your Honor. It's --

10 THE COURT: -- about this, but I -- again, I know
11 you're interpreting -- you're applying the statute as
12 written, but so am I. So what does undue risk constitute in
13 this case given the evidence I've been submitted? Because
14 I've been submitted this on one hand, and I've been
15 submitted on the other hand essentially instances of people
16 making their identity known. And that's what I have. So
17 I'm -- I want to be very clear about what I have --

18 MR. ZIPES: Okay. So --

19 THE COURT: -- or don't have in terms of the
20 evidentiary record. And if you want to take a minute to
21 think about it, that's fine, but I want to be crystal clear
22 what my record is and what you're relying on.

23 MR. ZIPES: So Your Honor, I'm not going to try to
24 dissuade you from your statements that there's evidence of
25 generalized fear in this case. And that on my side I -- we

1 haven't produced something specifically in this case other
2 than the examples I gave, but Your Honor, I'll note that
3 this is just not the way 107 is normally done in bankruptcy
4 cases, and --

5 THE COURT: But how are you supposed to --

6 MR. ZIPES: But --

7 THE COURT: -- do it in an instance like this?

8 MR. ZIPES: So Your Honor, as I think we stated, I
9 allowed Debtors' counsel to state this, if there's a
10 specific instance of someone who is in legitimate fear of
11 their life or that that's something that should be brought
12 to the parties' attention, my office did receive letters,
13 which we forwarded onto the Committee and the Debtor, again
14 generalized people who are uncomfortable in this situation.
15 And there are various things the Debtor could do short of
16 redacting Creditor lists completely. They can -- in Celsius
17 and other cases, they can have an email address where
18 parties in fear can write to this email address and get a
19 response.

20 My office takes these matters very seriously, as I
21 think Mr. Pesce would state in other cases where he has,
22 unfortunately, faced threats that my office is heavily
23 involved. But Your Honor, I know that Your Honor is maybe
24 not struggling with this so much, but it is an issue that
25 will arise in other cases. The evidence might not be two

1 financial advisors getting on the stand, but it will be --
2 it'll be a group of people saying we feel that --

3 THE COURT: Well, but --

4 MR. ZIPES: -- our name is out there.

5 THE COURT: -- I'll tell you if somebody comes in
6 with a generalized "I fear for my life", they're going to be
7 asked why. And I --

8 MR. ZIPES: Exactly, Your Honor.

9 THE COURT: They're going to be asked for --

10 MR. ZIPES: Exactly, Your Honor.

11 THE COURT: -- documented instances of why that
12 situation --

13 MR. ZIPES: Yeah.

14 THE COURT: -- put somebody at risk.

15 MR. ZIPES: So --

16 THE COURT: But in response to that --

17 MR. ZIPES: Yeah.

18 THE COURT: -- comment at the last hearing,
19 parties came forward with some declarations that did that.
20 And again, I don't know how to assess the level of risk.
21 Everything in life is a risk. Walking outside crossing a
22 crosswalk is a risk. There are acceptable risks and undue
23 risks, and so that's my question to you is how to determine
24 that here. And what I think I'm hearing you say is you're
25 not asking me to go down that road because you don't have a

1 suggestion on that front, but you're talking about you think
2 in these cases that there should be other workarounds that
3 should be resorted to first when someone can identify it,
4 and this is a potential issue.

5 MR. ZIPES: And Your Honor, I think you know that
6 my office does try to work out these issues. This is the
7 first case to my knowledge in -- well, leaving aside Celsius
8 maybe, where this sort of blanket request is being made.
9 And there were a lot of discussions, and I think at a
10 certain point the parties just agreed that we need to get it
11 before the Court to make a final determination here.
12 Because we couldn't come up with that appropriate line. But
13 I -- you can see --

14 THE COURT: Well, what does someone creating an
15 email address where they can be contacted do for you if the
16 name or the address or something else is still attached to
17 that where someone can be identified? Because certainly as
18 somebody who was the victim of many hacks in various
19 security checks that I went through in the government over
20 time, I have gotten one of those emails --

21 MR. ZIPES: Yep.

22 THE COURT: -- no doubt from a hack. I don't
23 believe any of my SF50s or whatever forms I submitted
24 contain my email address. It was found nonetheless, and
25 that doesn't seem to be a particularly difficult thing to do

1 on the internet to connect data. So if the -- if there's a
2 name attached with a new email address, it's going to be the
3 name that carries the day for purposes of connecting the
4 dots, isn't it?

5 MR. ZIPES: Well, Your Honor, so we're moving --
6 and it's appropriate to move and discuss 107(b) and (c) at
7 the same time, but if this is a 107(b) issue --

8 THE COURT: No, (b) is all about whether this
9 information is valuable to the --

10 MR. ZIPES: No, no, and I --

11 THE COURT: -- estate and the sale.

12 MR. ZIPES: -- understand that, but I --

13 THE COURT: Yep.

14 MR. ZIPES: -- I -- we were talking about 107(b)
15 and --

16 THE COURT: Well, let me ask you then.

17 MR. ZIPES: -- so let --

18 THE COURT: We'll close the door on that.

19 Anything else on (b) that you wanted to address?

20 MR. ZIPES: Yes. The one thing that I would say
21 about (b) is that the testimony today that was elicited
22 showed that what's being sold is not the mere name here. So
23 there is a commercial value being sold that can't be
24 accessed by just looking at a name on a creditor's list.
25 There's a whole range of information, which by the way the

1 parties --

2 THE COURT: Well, is that really right? What's to
3 prevent somebody from looking on the internet to connect
4 that name? And since emails don't cost anything, to send
5 out a blast email for everybody whose name is whatever it is
6 who fits the criteria that your AI search engine has
7 determined is appropriate to get a list of 100 of those
8 names -- email addresses and send something to them. Which
9 is clearly what happened in Celsius.

10 MR. ZIPES: But that's -- again, that's not a
11 commercial argument. That's a --

12 THE COURT: Well, it is if it means that you can
13 contact those folks to essentially poach those customers.

14 MR. ZIPES: I'm just telling you, Your Honor, the
15 evidence here shows that what's being sold goes far beyond
16 the name of -- and that the value of that is not -- the name
17 is limited.

18 THE COURT: So the fact that it's not just the
19 name, it's the other information means that the name is not
20 something worthy of protection for purposes of being in your
21 view.

22 MR. ZIPES: Yes. Yes, Your Honor.

23 THE COURT: All right.

24 MR. ZIPES: That's right. So Your Honor, I don't
25 think I have a lot more, but I just wanted to review. And

1 Your Honor, I know that you're very familiar with Celsius
2 and the law, but 107 -- the analysis under Celsius was
3 107(c) regarding public disclosure of UK and citizens. I --
4 Your Honor, at least it was probably under 107(c). And
5 Judge Glenn found that you couldn't supersede bankruptcy law
6 with the --

7 THE COURT: Well, I don't think anybody would
8 dispute that position. I think Judge Garrity considered it
9 as a matter of international comedy in terms of considering
10 things. And certainly, the Celsius privacy examiner, when
11 it's coming to determine what should and shouldn't be sold,
12 is looking at those, looking at, if I understand correctly,
13 the location of the Creditors and essentially what the nexus
14 of law is in terms of the population of Creditors and what
15 those laws say.

16 MR. ZIPES: And Your Honor, I guess just my final
17 point again is looking at the Creditor body here, which I
18 think is also not disputed, these are parties that knowingly
19 went in. They're sophisticated. They went in knowing
20 risks. And frankly, although you can't map out every single
21 risk, one risk when you're involved with -- in a -- as a
22 sophisticated Claimant in cases that -- or with a financial
23 institution is that that institution going into bankruptcy
24 or that information might be taken outside of your control.

25 And that does distinguish this case from some of

1 the other cases that were sort of blanket redactions were
2 made in opioid and sex abuse type cases. But that -- and
3 these are no unsophisticated parties. And Your Honor, you
4 can actually say the opposite about them. The reason we're
5 here today and maybe not in some other cases is exactly
6 because they know how to get these matters before this
7 Court, and they're arguing generalized fear, Your Honor.

8 That -- there was nothing on the record, and I'm
9 acknowledging generalized fear, and it should be taken
10 seriously, Your Honor. I'm not -- I don't think there's
11 anything -- any part of the record where it's not, but there
12 is 107. And Your Honor, we try to apply -- be practical,
13 which I'm hearing a little frustration in your voice about
14 that as well. But it's --

15 THE COURT: Well, when I look at the Ombudsman
16 Report in Celsius, it takes a whole host of things into
17 consideration. Location of the folks whose information
18 might be sold, what law applies, executive orders talking
19 about the protection of this information, and a whole host
20 of things that make me think we're doing a similar kind of
21 analysis, but we're doing it in a very sort of flat two-
22 dimensional way. Whether it fits in the 107 box or not.

23 And so I think that highlights the tension between
24 different parts of the case and what people should be
25 thinking about and what -- again, 107 is not a particularly

1 nuanced statute that way, but it's frustrating because I
2 don't have an Ombudsman's Report because I don't have a
3 sale. And we can't make it sort of a nuanced analysis of
4 what should happen with these people's information in terms
5 of being sold to a third party, which certainly seems
6 relevant when we're thinking about what information should
7 be just let out into the world.

8 And so I don't -- I mention that -- I don't expect
9 you to have an answer to that. I don't have an answer to
10 that, but it does highlight the conundrum we're in, in terms
11 of the procedure and the posture we're in today versus where
12 we may be a few months from now.

13 MR. ZIPES: And Your Honor, I completely agree
14 with you that it's -- you know, it's a difficult issue to
15 attack. And the -- Your Honor, I want to just make two more
16 points about the privacy policy and whatever form it is.
17 One is that we heard testimony today that -- about the
18 parties understandings and what not. The Court can just
19 read the language itself.

20 And I will note that if you were concerned about
21 your name getting out there, Your Honor, and you read this
22 privacy policy, you might have some follow-up questions.
23 There's no testimony about that. And let me -- what I mean
24 by that is if we are relying on this privacy policy to sort
25 of get -- peg parties' expectations, you do have on Page 8

1 of 22 -- and we heard Mr. Renzi explain -- give his
2 explanation for that. I would leave it for the Court to
3 look at the language and the difference in the language
4 between the sale and the sharing of financial institutions.

5 I think the whole point here is parties were
6 expecting to benefit from the crypto ecosystem, and they
7 didn't want their names to get out there. But Your Honor,
8 that's -- you could focus on the privacy policy and --

9 THE COURT: But let me ask you about that. I'm
10 not sure that that's even the relevant policy for purposes
11 of today --

12 MR. ZIPES: Well --

13 THE COURT: -- because that's essentially the
14 click-through agreement for accessing the website where,
15 when you become a customer, lender, whatever term we want to
16 use, that you end up exercising -- you enter into an
17 agreement, and it's then the subsequent agreement, the
18 Master Digital Asset Loan Agreement in Exhibit B, which has
19 its own privacy confidentiality provision at XI on Page 11
20 that talks about each party's agreement shall hold in
21 confidence all information obtained.

22 It does have exceptions, right? It has the
23 exception you'd expect for -- to the extent required by any
24 law, regulation, or direction by a court of competent
25 jurisdiction or government agency regulatory authority with

1 jurisdiction. And so it does have exceptions, but it would
2 seem that that's the policy I should be looking at.

3 MR. ZIPES: Your Honor, I -- so to the extent
4 relevant, I think you should be looking at both of these
5 policies, but I -- to the extent there's any testimony that
6 anybody focused on this privacy policy at all when they were
7 giving their money or coins to the Debtor, I don't think
8 there's any testimony on that.

9 THE COURT: Well, is there a dispute about the
10 fact that this Master -- let me make sure I have the name
11 properly identified here -- that this Master Digital Asset
12 Loan Agreement that's at Docket 156-2 that's Exhibit B to
13 the same declaration where the policy privacy notice that's
14 on the internet as Exhibit A, the representation, which I'm
15 taking as a proffer, is that that's what all these customers
16 and investors -- customers and lenders would enter into.

17 And that that therefore I have one of those for
18 everybody whose information is sought to be protected, and
19 that that, since that's a contract, would seem to supersede
20 the click-through agreement that somebody interacting with
21 the website, which is -- I mean, I've had those in other
22 trials, and they are what they are. And if you buy software
23 that way, for example, and you hit the click-through
24 agreement, and there's no separate agreement, then it is
25 what it is. But if you have a separate agreement like this

1 as a lender/customer, that this would seem to be the
2 operative agreement.

3 MR. ZIPES: Your Honor, I think there's a
4 subcategory that this does apply to. A subcategory of
5 customers. And I might have to defer to the Debtor in --

6 THE COURT: Well, I asked the question whether
7 this applies to all the folks whose information is sought to
8 be protected, whether everybody would enter into one of
9 these agreements in Exhibit B, and I was told yes. So I
10 don't consider there to be any factual dispute based on the
11 evidence I've been presented. But --

12 MR. ZIPES: Okay.

13 MR. PESCE: Your Honor --

14 THE COURT: -- if there is, I don't want to -- I
15 want to get it right. So --

16 MR. ZIPES: Well, I have something to say, but go
17 ahead.

18 MR. PESCE: I don't mean to interrupt, but --

19 MR. ZIPES: No, go ahead. Go.

20 MR. PESCE: -- just in the interest of making --

21 MR. ZIPES: Yeah, go.

22 MR. PESCE: -- sure that we have it right,
23 frankly, I'm just now realizing this. Exhibit B applies to
24 Gemini lenders.

25 THE COURT: Okay.

1 MR. PESCE: So Exhibit B applies to the subset of
2 lenders who signed up through the Gemini Earn Program. I
3 just wanted to clarify that.

4 THE COURT: All right. So it's not everybody
5 whose information is sought to be protected here.

6 MR. ZIPES: Subject to clarification from the
7 Debtors on that point, that's just how I'm reading the
8 document.

9 MR. PESCE: Well, that was my understanding, but I
10 -- and that's why I turned to the Debtor, but they're --

11 THE COURT: All right. No, that's a fair -- it's
12 a fair point. I want to understand when we're talking about
13 whose information is sought to be protected, whether each
14 one of them has signed a Master Digital Asset Loan Agreement
15 or whether some of them have signed the other agreement.
16 Because I have to figure out the significance of the
17 agreements and who they apply to.

18 MS. VANLARE: So Your Honor, my understanding is
19 that -- so it's helpful to know this is for Gemini lenders,
20 but my understanding is that other -- basically anybody who
21 was a lender signed something very similar. In other words,
22 signed a master loan agreement with confidentiality
23 provisions.

24 THE COURT: All right. So here's what I'm going
25 to do on that front. I'm going to ask the Debtors to make a

1 submission, so I know what -- if it's the same as this
2 Master Digital Asset Loan Agreement, then it's the same.
3 It's much like the conversation we had about the policies
4 that are Exhibit A. If it's different, then I suppose it is
5 what it is. I'm not sure at the end of the day it'll be
6 relevant, but I just need to know what the facts are for the
7 purposes -- besides it's a fair point to know when it
8 actually would control or not.

9 MR. ZIPES: Your Honor, I won't stand on ceremony.
10 If it's similar and they can confirm that, I don't -- they
11 don't need to submit extensive documents on it. But that's
12 --

13 THE COURT: All right. Maybe someone can
14 enlighten me.

15 MR. PESCE: Your Honor, just as I indicated when I
16 was at the podium, all of our clients have signed the Master
17 Digital Loan Agreement. We're happy to confirm that with
18 Mr. Zipes, though, to show that that is the one that is
19 controlling.

20 THE COURT: All right. So here's what I'm going
21 to do. I'm going to consider that anybody who's information
22 is sought to be protected is governed by this master
23 agreement. If after conversations among the parties people
24 discover that that's not right within, you know, five
25 business days you will submit something to let me know that

1 that's -- there's something different factually.

2 Again, I'm not sure how it's all going to work out
3 in the wash, but it's just -- I want to make sure to get my
4 facts straight, and it's a reasonable -- and they're
5 different, right? They are different. You're citing to the
6 internet policy for a reason, and I think the agreement has
7 a little less wiggle room frankly. So that would be just
8 helpful to know.

9 MR. ZIPES: And Your Honor, just to -- and I
10 accept the representations if that's what they're saying. I
11 understand they want to double check, but I -- and that's
12 sufficient for my purposes. I do want to point out in this
13 privacy policy as well that this is a point that they
14 highlighted, Your Honor. And I know you're focusing on the
15 master agreement, but this is information that they
16 themselves are highlighting.

17 And there's on Page 19 of 22, Paragraph 13 it's
18 highlighted Genesis does not sell your personal information.
19 And then right below that is something a little bit
20 inconsistent, which says that you can submit a request
21 through Access Correct or deleted your personal information;
22 or two, opt out of the selling or sharing of your personal
23 information.

24 So just someone reading this who is concerned
25 about privacy and not getting their name out, Your Honor, is

1 -- alarm -- presumably alarm bells are going off at that
2 point. And I'm just noting that we're talking about
3 evidence here, how concerned parties were at the time in
4 their name getting out. So I -- I'm just noting that for
5 the record. And Your Honor, I'll see if I have any other...

6 Your Honor, in large cases, financial cases that
7 are not crypto, you're going to see large individual
8 investors buying notes or being Creditors in those cases.
9 Hundreds of millions of dollars that we'd all want to be
10 that lucky, I guess, to have that money to invest, but not
11 crypto cases. I think they would logically look at any
12 statement in this case and say, well, that applies to me as
13 well. I'm high net worth. I went into this with my eyes
14 open, but I want the protections of 107(b) or (c) to apply
15 to me.

16 And I think that that argument can be made by a
17 lot of -- in a lot of other contexts. And I think the
18 phishing and all these harms that come from the internet
19 based on information being released in bankruptcy, they
20 apply just as much to retail creditors and --

21 THE COURT: Well, that's why I was --

22 MR. ZIPES: -- and others.

23 THE COURT: I was not giving you a hard time
24 without -- for no reason. I was trying to figure out how to
25 quantify the risk here. So --

1 MR. ZIPES: Yeah.

2 THE COURT: -- because the argument is that
3 crypto, because of its bearer nature, is a different kind of
4 risk. I'm not a crypto expert.

5 MR. ZIPES: Yep.

6 THE COURT: And I don't know.

7 MR. ZIPES: Yep.

8 THE COURT: And you're right. They're -- unless
9 you identify the facts and circumstances that make relief
10 appropriate in one circumstance as distinguished from
11 another, you're -- you run the risk of setting precedent
12 that is -- has no limitations, which is not my intent.

13 On the other hand, I do have to look at evidence
14 in each individual case. So -- but I understand your point.
15 And I think that's what the U.S. Trustee's -- it's pretty
16 clear that's what the U.S. Trustee's motivation here is, is
17 precedent in cases generally for information of this type.
18 I got it.

19 MR. ZIPES: And Your Honor, I would just again
20 state, although the record is entirely clear, and I'll sit
21 down after this, but I -- what's being proposed here is just
22 a blanket redaction of information. And that just is not
23 consistent with 107 and your extraordinary remedies. There
24 are ways of dealing with these issues without the -- with
25 the total redaction of all names and addresses. And we --

1 there is a need for transparency and disclosure in
2 bankruptcy as well. So Your Honor, with that, I'll sit
3 down.

4 THE COURT: All right. Well, I just want to
5 confirm for purposes of whenever we do anything that's
6 redacted is going to be shared with the U.S. Trustee's
7 Office as well as with the Committee. And I assume probably
8 the Ad Hoc as well. Is that correct?

9 MR. ROSEN: That's correct, Your Honor.

10 MS. VANLARE: I'm not sure -- I'm sorry. I'm not
11 sure we've shared information about Creditors with the Ad
12 Hoc Committee.

13 THE COURT: All right.

14 MS. VANLARE: I just want to be clear about that.

15 THE COURT: All right.

16 MS. VANLARE: I think, but yes absolutely --

17 THE COURT: But with the --

18 MS. VANLARE: -- with the --

19 THE COURT: -- official Committee and with the
20 U.S. Trustee's Office.

21 MS. VANLARE: Yes. Yes.

22 MR. ZIPES: I think 107 requires it for us, but
23 Your Honor, they were doing it regardless.

24 THE COURT: What's that? Say that again?

25 MR. ZIPES: I think 107 requires my office to

1 receive that information, but they -- I don't think that's
2 controversial regardless.

3 THE COURT: No, I don't think it is. But for
4 purposes of just making clear what the state of play is
5 here. All right.

6 MS. VANLARE: Your Honor, just a few points.
7 First, I think -- and I'll identify myself. Sorry. Jane
8 VanLare, Cleary Gottlieb Steen and Hamilton for purposes of
9 the record on behalf of the Debtors. So first, I think it's
10 inappropriate to make any kind of evidentiary inferences
11 from the fact that the Debtor's position has evolved on this
12 issue. I think Your Honor had said that, but I do think
13 it's worth underlining that the Debtors' position evolved as
14 -- you know, includes a consideration of different factors
15 and certainly discussions with the Creditors' Committee was
16 very important.

17 I'll also note that the -- we didn't file the --
18 our Motion for Bidding Procedures until several months into
19 the case. Secondly, the privacy policy -- and as Your Honor
20 noted, you know, and I'll say I'm not aware of anybody who
21 didn't -- who is a lender who didn't enter into an MLA, but
22 it is something we can confirm.

23 But the privacy policy that Mr. Zipes focused on,
24 and in particular this provision that, you know, Creditors
25 could've let -- had the opportunity by virtue of the

1 language of the privacy policy to opt out of their names
2 being disclosed. Well, Your Honor, that's exactly what
3 they've done. They have -- as soon as sort of -- as soon as
4 the cases were filed and these issues became known, that's
5 exactly what they did, which is to contact their lawyers,
6 contact the Debtors, and contact the counsel to the
7 Creditors' Committee to avail themselves of that.

8 Third, Mr. Zipes said at several points in his
9 presentation that this is a blanket request, and I don't
10 think it's a blanket request. And we did confirm that we
11 did not redact vendor information. This is limited to
12 lenders who are customers of the Debtors. So I think that
13 it's unfair and inaccurate to call it a blanket request.
14 It's tailored to the circumstances of these cases.

15 THE COURT: Well, I think his concern is the next
16 case. His concern is what about somebody comes in and says
17 we're the bond holders, we have an ad hoc bond holder group,
18 we don't our information out there. There were -- we have
19 high-net individuals and institutions, and we don't want the
20 information out there so that we could be contacted or
21 phished or any of that. So what's your thoughts on that?

22 MS. VANLARE: And I appreciate all of that, Your
23 Honor, which is why I think there is a showing, an
24 evidentiary showing, as well as arguments. We've a number
25 of points we've made, and that the testimony and the

1 declarations support as to what distinguishes this case,
2 crypto industry, and in particular this case from, you know,
3 any other large case where you have Creditors with large
4 claim amounts. I do think that the record is very full in
5 terms of why it is that this is different. And I think Your
6 Honor can and should rely on that.

7 And lastly, in terms of the name, I think Mr.
8 Zipes had said, you know, it's not just the name that's
9 being sold, but other things as well. And therefore, I
10 guess you should infer that the name is not valuable and the
11 name and contact information. And I would just say that
12 that's contradicted by the declarations and by the
13 testimony, which is unrebutted. And furthermore, I'll note
14 that it's --

15 THE COURT: Well, what in particular are you
16 referring to when you're citing a response to that notion of
17 -- and saying if you'd spit out the name by itself it
18 doesn't have the same value?

19 MS. VANLARE: So two points on that. One is that
20 it's actually not just the name and the contact information.
21 It would be the connection of the name and contact
22 information with a specific claim amount. So that actually
23 -- that combination provides information to others as to not
24 only the identity of the Creditors, but also the size of
25 their claim from which obviously lots of inferences can be

1 made.

2 But the second point is that, you know, Mr.
3 Tichenor's declaration says, and again there was testimony
4 here, that the names and contact information by themselves
5 without all the other stuff, just that information as I
6 mentioned with the claim amounts, it's sort of bonus, the
7 evidence is unrefuted that that in and of itself is a
8 valuable asset.

9 THE COURT: All right.

10 MS. VANLARE: Nothing further. Thank you.

11 THE COURT: All right. Thank you very much. I'll
12 hear from the Committee.

13 MR. PESCE: For the record, Gregory Pesce, White
14 and Case on behalf of the Official Committee. Thank you
15 again, Your Honor, for your time. Just a couple of quick
16 points I just wanted to highlight from the Committee's
17 perspective. First, the various statements that Creditors
18 haven't been reaching out and what not, you know, we
19 disagree with that. They've reached out to both of us.
20 They're reached out to the Committee, and the Committee
21 ultimately is here for this very reason so that they have a
22 fiduciary to look out for their interests even if they don't
23 -- each and every one of them doesn't come forward.

24 And the second point, and this goes to the blanket
25 kind of comments and then just the nature of the relief, my

1 understanding is this all started over the Creditor Matrix
2 Motion and then the schedules and statements. And as to the
3 lenders of Genesis, it's among those two different sets of
4 documents. It's their name, their email address, their home
5 physical address, and/or their claim amount.

6 So we are not seeking to seal every type of
7 information. It's just the ones that are before the Court
8 today, which I think is a testament to how narrow the relief
9 is. And then in a similar vein, you know, I can't speak for
10 what will happen in a future case, but I think the reference
11 to, you know, these cases of like offshore hedge funds
12 liquidating in the district or something like that, you
13 know, I'm not familiar with the facts there.

14 But the unrefuted testimony today is that this
15 information being monetized in this case for these
16 Creditors, I don't know if that's necessarily true for the
17 investors or note holders or bond holders or whatever for a
18 fund that might liquidate in bankruptcy. So thank you for
19 your time and consideration today.

20 THE COURT: All right. Thank you. And anything
21 from the Ad Hoc Group?

22 MR. ROSEN: Nothing further, Your Honor.

23 THE COURT: All right. Anything from any other
24 party? All right. So I'm going to do a couple of things.
25 I'm going to wait for some confirmation that we have our

1 facts straight on the master agreements, and just so I know
2 what's the operative document for purposes of considering
3 the parameters of the privacy here and the expectations of
4 privacy. And I will I think, given the U.S. Trustee's
5 Office's profound interest in this, I'll likely issue a
6 written decision. But if I don't, I'll do a fairly
7 extensive bench ruling.

8 In the meantime, the information will remain
9 confidential pending that ruling. I'll let you know when
10 that's -- that decision is ready to be issued. I will tell
11 you my inclination is to grant relief under Section (b)
12 given the confidential -- that this confidential -- this
13 information, if kept confidential, is marketable, that there
14 -- the evidence, which is unrebutted, is that it has value
15 in this case consistent -- and that's consistent with other
16 cases as well. I think the privacy issue, as our
17 conversation's made clear, is much harder to get a grasp on
18 given the statute.

19 The statute puts an important -- places the
20 paramount value as one of transparency. Obviously,
21 transparency in public proceedings is enormously important.
22 It's not absolute, but we'll say that the statute probably
23 is not the most nimble grappling with the modern world of
24 the internet and things we read about all the time in terms
25 of what large-scale fraud looks like these days.

1 And so -- but that's not something that we have an
2 ability or anyone has an ability here to fix in terms of the
3 more nuanced approach to that situation. But I appreciate
4 everybody's briefing and argument. The whole idea behind
5 oral argument is to have a spirited discussion about the
6 issues that we're debating such that we leave no stone
7 unturned. That only works when people are willing to set
8 aside what I'm sure were no doubt beautiful presentations
9 and speeches that could've been given.

10 And -- but it does do violence to what you all are
11 doing, and I appreciate everybody's willingness to just jump
12 in and answer difficult questions so that I can make sure
13 that I know where you stand, and I know what the record is
14 and what I have to address. So thank you very much. So
15 with all that said, is there anything else that we need to
16 address here this afternoon?

17 MR. SHORE: Yeah, very briefly, Your Honor. Chris
18 Shore from White and Case on behalf of the Committee.
19 There's been some talk in this case about the Debtors filing
20 a non-operational motion and having it expedited for a
21 hearing as early as this Wednesday. For a host of reasons
22 from the Committee's perspective, this week's going to be
23 very tough to do that for a motion we haven't seen yet.

24 But what I'd like to do is if the Debtors do file
25 it, we'll have an opportunity to talk, see if we can't agree

1 on an expedited hearing date that works for all the
2 interested parties. And to that end, if we can't reach an
3 agreement, have a conference with Your Honor as contemplated
4 in your rules about when to set. Because the Debtors are
5 still, as I understand it, reserved the right to try to go
6 forward at Wednesday's omnibus, if Your Honor has some time
7 tomorrow afternoon, or at least a block that you can let us
8 know that we can reach you --

9 THE COURT: Yeah. I'm around. I know I have
10 hearings tomorrow. I confess --

11 MR. SHORE: I think Purdue's going to be a short
12 one. It's at 11 and it's uncontested.

13 THE COURT: All right. So it sounds like the
14 afternoon would be fine.

15 MR. SHORE: Very good.

16 THE COURT: I'm also around today and have the
17 benefit of having folks here if anybody wanted to have a --
18 sort of a chambers conference. My rule for chambers
19 conferences is always that any party who has skin in the
20 game needs to be there so nobody feels like they've been
21 excluded.

22 MR. SHORE: Yeah.

23 THE COURT: But there are sometimes when a
24 chambers conference can be helpful in navigating things
25 efficiently. And so I'm happy to do that as long as nobody

1 feels like they're going to make the song from Hamilton that
2 they're not in the room where it happens. That's what -- we
3 don't want to ever have that problem.

4 MR. SHORE: No.

5 THE COURT: So -- but I'll leave it to you all if
6 that might be productive. I mention it because you actually
7 happen to be here, which is not an everyday occurrence
8 anymore. So I'm here. And so if that's something you want
9 to do, just knock on chambers' door and let me know and we
10 can do it in the courtroom. So -- off the record. But I'll
11 leave it to you all in your considered professional judgment
12 on what's the best way --

13 MR. SHORE: Practically --

14 MR. O'NEAL: Your Honor, Sean O'Neal, Cleary
15 Gottlieb on behalf of the Debtors. I hadn't anticipated
16 that this would come up today, so I'm not in the hearing
17 today. So I apologize for that. I think this sounds like
18 it's a bit of a scheduling issue, but probably more than
19 that as well. I think there are underlying merits that will
20 probably be raised in addition to scheduling.

21 I would suggest that, you know, we wait until this
22 motion is filed. It may or may not be filed. Wait until
23 the motion is filed and then we'll have something to
24 discuss. I would not -- I would prefer not to have a
25 chambers conference today simply because I'm not there and

1 hadn't arranged --

2 THE COURT: That's fine. I'll let you all chat.

3 I just wanted to make myself available to the extent that
4 everybody agrees that it would be a good idea. If everyone
5 doesn't agree, that's usually a sign that it's not --

6 MR. SHORE: Sure.

7 THE COURT: -- a good idea. So that's fine. I
8 will be guided by the parties, and you'll obviously talk and
9 figure out what you think makes the most sense.

10 MR. SHORE: Great.

11 THE COURT: All right.

12 MR. SHORE: Thank you, Your Honor.

13 THE COURT: With that, anything else here this
14 afternoon? All right. I know we blew right past lunch.
15 Thank you very much for your accommodation on that. And
16 with that, court is adjourned.

17 (Whereupon these proceedings were concluded at
18 2:28 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

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